



## PLANNING COMMISSION STAFF REPORT

<b>File No.</b>	<b>CP15-016</b>
<b>Applicant:</b>	<b>1<sup>st</sup> Street SJ Enterprise</b>
<b>Location</b>	<b>58 South 1<sup>st</sup> Street</b>
<b>Existing Zoning</b>	<b>DC Downtown Primary Commercial</b>
<b>Historic Resource</b>	<b>Yes</b>
<b>Annexation Date:</b>	<b>March 27, 1850 (Original City)</b>
<b>CEQA:</b>	<b>Categorical Exemption, CEQA Guidelines Section 15301(a) (Existing Facilities)</b>

**APPLICATION SUMMARY:** Conditional Use Permit to allow a drinking establishment with an approved maximum occupancy of more than 250 people with late night use until 2:00 a.m. in an existing 8,684 square building in the DC Downtown Primary Commercial Zoning District on an approximately 0.15 gross acre site, located on the east side of South 1<sup>st</sup> Street, approximately 400 feet southerly of East Santa Clara Street (58 South 1<sup>st</sup> Street).

### RECOMMENDATION:

Staff recommends that the Planning Commission **recommends to the City Council approval** of the Conditional Use Permit based upon the facts and findings in this staff report and the attached draft Resolution.

### PROJECT DATA

GENERAL PLAN CONSISTENCY			
General Plan Designation		Downtown <input checked="" type="checkbox"/> Consistent <input type="checkbox"/> Inconsistent	
Consistent Policies		Goal LU-3, Policy LU-3.1, Policy LU-3.5, Policy LU-3.7, Policy LU-3.8	
Inconsistent Policies		None	
SURROUNDING USES			
	General Plan Land Use	Zoning	Existing Use
North	Downtown	DC Downtown Primary Commercial	Public Drinking Establishment
South	Downtown	DC Downtown Primary Commercial	Public Drinking Establishment
East	Downtown	DC Downtown Primary Commercial	Parking Lot
West	Downtown	DC Downtown Primary Commercial	Public Drinking Establishment, Retail, Parking Garage

RELATED APPROVALS	
Date	Action
1869	Building constructed.
11/15/87	Site Development Permit to remodel a commercial building. (File No. H87-112)
4/9/92	Permit Adjustment to install light fixtures on façade. (File No. RAD91-006)
11/2/92	Historic Preservation Permit to add a second floor balcony. (File No. HP92-007)
11/20/92	Site Development Permit to add a second floor balcony. (File No. RH92-008)
9/1/93	Permit Adjustment to add a steel canopy at front entry. (File No. RAD93-027).
1/11/95	Conditional Use Permit to add a theatre space in banquet room. (File No. RCP94-005).
9/17/98	Permit Adjustment to restore building façade, remove 1-story addition in rear, and interior remodel. (File No. RAD98-043).
7/26/06	Sidewalk Café Permit to allow an approximately 300 square foot outdoor seating area on South 1 <sup>st</sup> Street. (File No. SC06-005).

## PROJECT DESCRIPTION

On March 25, 2015, the applicant filed an application for a Conditional Use Permit (CUP) to allow a public drinking establishment with late night use for approximately 669 people in an existing vacant building located on a 0.15 gross acre site in the DC Downtown Primary Commercial Zoning District. The subject building will be occupied by a drinking establishment in the form of a night club/lounge at late hours, and will also be occupied by a restaurant and banquet facility during the day. The Zoning Ordinance requires a CUP approved by the City Council for drinking establishments with an approved maximum occupancy load of over 250 persons and that operate between 12:00 midnight and 6:00 a.m.

The subject site is developed with an approximately 8,684 square foot two-story building that was previously occupied by a restaurant and banquet room. The site also has an approximately 1,795 square foot outdoor patio and an approximately 400 square foot second-story balcony. Both the patio and balcony are located at the rear of the building facing an existing parking lot. There are no exterior modifications or expansion of the existing building being proposed.

The proposed night club/lounge (public drinking establishment) will occupy both floors and the outdoor patio of the building. The proposed hours of operation for the night club are from 9:00 p.m. to 2:00 a.m. daily. Hours may vary to accommodate special events and public demand, but will not go past 2 a.m. The night club would contain four dance floors, a bar serving alcoholic beverages, a lounge area, and outdoor patio. Live music and entertainment will be provided during the night club hours, which requires the issuance of a public entertainment permit by the Police Department. No minors will be allowed during the night club hours. A trained security staff would also be provided during the night club hours to monitor the interior and exterior of the building. They will also ensure customers have cleared the area and adjacent parking lot at closing.

The proposed project also includes a restaurant on the first floor serving a full food menu from 6:00 p.m. until 9:00 p.m. daily and a banquet facility / special event venue on the second floor, which would be by reservation only. The restaurant and banquet facilities uses are permitted by right in the DC Downtown Primary Commercial Zoning District, and thus only the public drinking establishment with a maximum occupancy of over 250 people and late- night operation will be reviewed as part of this Conditional Use Permit.

**Historic Resource:**

*Figure 1: Existing Building Facade to Remain*

The subject building was built in 1868 and is commonly referred to as the Rea Block or the Pomeroy-Skerritt Building. The site is listed on the National Register of Historic Places and the City of San José Historic Resources Inventory as a City Landmark Structure and Contributing Structure. The applicant is not proposing any changes to the exterior façade of the building.

**Surrounding Uses:**

*Figure 2: Aerial Image of the Subject Site and Surrounding Area*

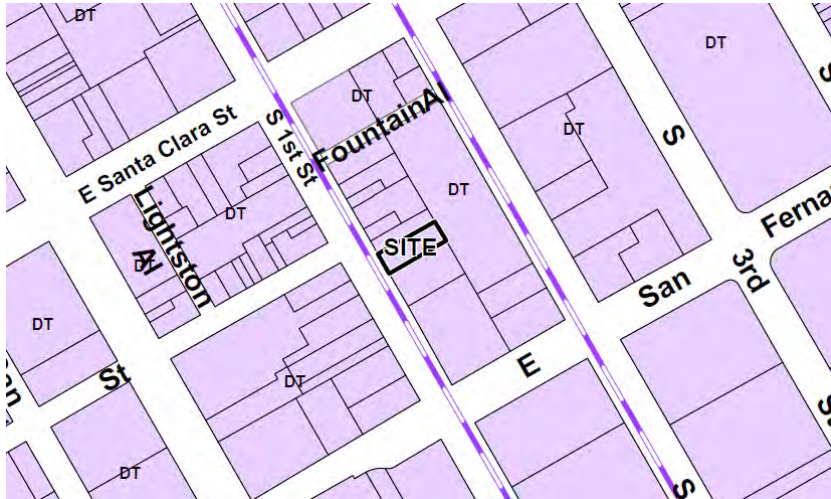
The subject site is located on the east side of South 1<sup>st</sup> Street, approximately 400 feet southerly of East Santa Clara Street. Surrounding land uses include public drinking establishments to the north and south; a parking lot to the east; and a public drinking establishment, retail use, and a parking garage (across South 1<sup>st</sup> Street) to the west.

## ANALYSIS

The proposed CUP was analyzed with respect to conformance with: 1) the Envision San José 2040 General Plan; 2) the Zoning Ordinance; 3) City Council Policy 6-27: Evaluation of 24-Hour Uses City; 4) Council Policy 6-23: Evaluation of Night Clubs and Bars; and 5) the Downtown Design Guidelines.

### Envision San José 2040 General Plan Conformance

The subject site is designated Downtown on the Envision San José 2040 General Plan Land Use/Transportation Diagram.



*Figure 3: General Plan Map*

This designation includes office, retail, service, residential, and entertainment uses in the Downtown. All development within this designation should enhance the “complete community” in downtown, support pedestrian and bicycle circulation, and increase transit ridership. As a proposed late night drinking establishment use, this use is consistent with the uses allowed by this General Plan land use designation. Moreover, this type of use would encourage residents to venture into the Downtown area and increase pedestrian activity in the area. The project is also consistent with the following General Plan goal and policies:

1. Downtown Goal LU-3: Strengthen Downtown as a regional job, entertainment, and cultural destination and as the symbolic heart of San Jose.
2. Downtown Policy LU-3.1: Provide maximum flexibility in mixing uses throughout the Downtown Area. Support intensive employment, entertainment, cultural, public/quasi-public, and residential uses in compact, intensive forms to maximize social interaction; to serve as a focal point for residents, businesses, and visitors; and to further the vision of the Envision General Plan.
3. Downtown Policy LU-3.3: Support the development of Downtown as an arts, cultural, and entertainment center for San Jose and the region. Promote special events, parades, celebrations, performances, concerts, and festivals.



4. Downtown Policy LU-3.8: Leverage Downtown's urban nature and promote projects that will help achieve economic, fiscal, environmental, cultural, social and other objectives of this plan.

*Analysis for LU-3, LU-3.1, LU-3.3, and LU-3.8: The proposed project will occupy a vacant building, and will bring business and activity to this area of Downtown.*

*The ability to host the range of uses provided by the proposed project and late night activity and bar use will enhance the Downtown. This use could be a catalyst for attracting other uses such as art galleries, restaurants, and various other types of entertainment venues. As more venues open in Downtown, a stronger identity for this area will develop as a place of art, culture, and entertainment. Patrons coming to the venue will not only benefit from the social activities, but they can also explore and visit other uses in the area and spur economic activity in Downtown.*

5. Downtown Policy LU-3.7: Recognize the urban nature of Downtown and support 24-hour uses and outdoor uses, so long as significant adverse impacts do not occur.

*Analysis: The proposed use is requesting late night use until 2:00 a.m. This time frame allows downtown to be a center of activity for a longer period of time. The CUP permit conditions ensure that this late night use will not create adverse impacts, that patrons are appropriately queued in the public right-of-way, that noise produced by the venue is controlled, and that there is appropriate security at the venue. Additionally, the proposed use is not directly adjacent to residential development in that the nearest residence is approximately 250 feet away on South 2<sup>nd</sup> Street on the other side of a surface parking lot that provides a buffer between the residential units and the proposed project.*

## Zoning Ordinance Conformance

The proposed site is located in the DC Downtown Primary Commercial Zoning District.

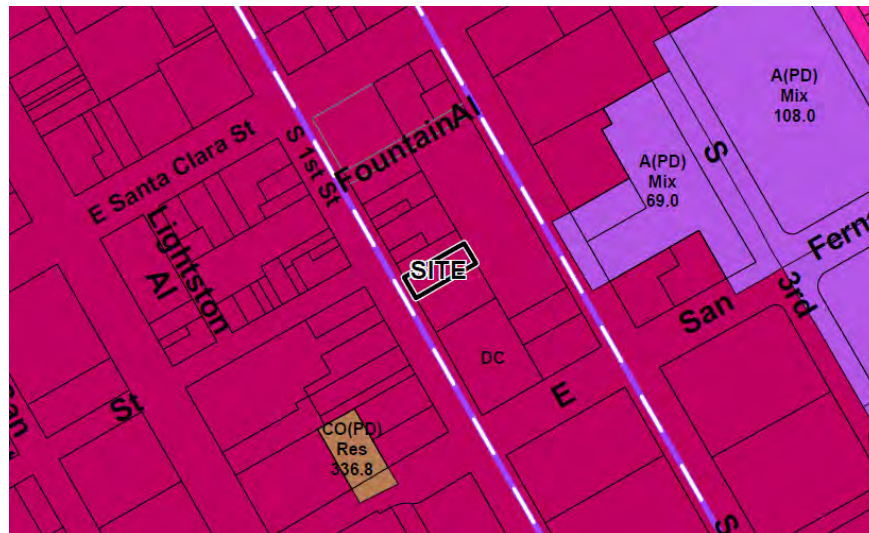


Figure 4: Zoning Map

Per Section 20.70.100 of the Municipal Code, drinking establishments with an approved maximum occupancy load of over 250 persons and that operate between 12:00 midnight and 6:00 a.m. require a CUP approved by the City Council as the decision-making body. Applications for such use shall first be considered by the Planning Commission at a public hearing; the Planning Commission shall then forward a recommendation on the application to the City Council.

## Parking

The subject site is located within the Downtown Parking Management Zone. Per section 20.70.370 of the Municipal Code, in this zone, any structures that are legal nonconforming that are on parcels that are 10,000 square feet or less with up to 30,000 square feet of building area do not need to provide parking. The proposed project will be located in an approximately 8,684 square foot existing building on an approximately 6,534 square foot parcel. Therefore, parking is not required.

## **City Council Policy 6-27: Evaluation of 24-Hour Uses**

The City Council Policy on Evaluation of 24-Hour Uses is intended to assure compatibility of uses operating between 12:00 midnight and 6:00 a.m. with surrounding land uses. In regard to nightclubs/ bars that plan to operate until 2:00 am, the Policy states that uses under this category should meet the City Council Policy on the Guidelines for Evaluation of Nightclubs and Bars, which is discussed below.

## **Council Policy 6-23: Guidelines for Evaluation of Nightclubs and Bars**

The City Council Policy, Guidelines for Evaluation of Nightclubs and Bars, is intended to facilitate the evaluation process for individual permit applications by identifying the needed project characteristics that are necessary for approval. The relevant policy areas from City Council Policy 6-23 are discussed below:

### 1. Land Use Compatibility

- a. Nightclubs should be encouraged throughout the Downtown Core to promote a diversity of uses provided that they do not adversely impact existing or planned residential uses or conflict with other General Plan goals and policies.

*Analysis: The adjacent uses to the project are public drinking establishments, retail, a parking garage, and a parking lot. These uses are compatible with the proposed drinking establishment in that the proposed use is existing and prevalent in the area. The project will contribute to the vibrant, urban downtown corridor by adding a use that enhances Downtown as a strong economic, cultural, and social hub. Similarly, this establishment will be an added destination for residents and workers in the area, and will add to the vibrant urban environment. Planning staff does not foresee any new issues of land use compatibility with this use as the outdoor queuing of patrons runs along South 1st Street, similar to the adjacent nightclub and bars. The closest residential property to the site is over 250 feet away, which is buffered by a surface parking lot in between.*

- b. It is the responsibility of the Chief of Police to evaluate all bar and nightclub proposals to ensure the safety and security of both patrons and citizens. Conditions may be imposed to monitor bars and nightclubs and to discourage nuisance activities. These conditions may include such requirements as interior or exterior security guards, additional lighting, limited occupancy, and modifications of controls or procedures to increase effective law enforcement.

*Analysis: The Police Department issued a memorandum on this project, and is neutral to the proposed use at this location.*

## 2. Noise

- a. Both new construction and renovation of existing structures should meet the City's noise standards. Sound attenuation techniques may be required to buffer adjacent interior and exterior spaces from noise generated by a nightclub or bar use.

*Analysis: The proposed use will operate in an existing building that previously accommodated entertainment uses. The acoustics of the building are constructed in a way to prevent escaping noise. If the sound level becomes a nuisance, the applicant will be required to come into conformance with the City's noise requirements.*

- b. Windows and doors should not be open during the operation of the facility where noise impacts the surrounding area. Adequate ventilation should be provided so that openings to the outside can be closed when the bar or club is at full capacity.

*Analysis: The applicant will direct speakers and other amplification devices away from openings and close the doors when noise becomes an issue during an event.*

- c. Outdoor areas for entertainment, including areas with roof openings, should not be allowed where noise impacts the surrounding area. Hours of operation and/or amplified sound should be carefully regulated to ensure compatibility with adjacent uses.

*Analysis: There is an existing outdoor patio that will be utilized by the proposed project, but no music will be provided in the outdoor area. The adjacent uses are bars, nightclubs, and parking that will not be affected by any noise. The closest residential property to the site is over 250 feet away, which is buffered by a surface parking lot in between. If the sound level becomes a nuisance, the applicant will be required to come into conformance with the City's noise requirements.*

## 3. Parking

- a. All nightclubs and bars are encouraged to identify the need for loading and unloading zones as means to enhance traffic circulation around the facility. All nightclubs and bars should be required to identify and publicize the location and availability of parking for its patrons.

*Analysis: The subject site is located in the Downtown Parking Management Zone, and parking is not required.*

## 4. Garbage and Litter

- a. Nightclub and bar operators should provide daily cleaning of the public right-of-way up to 200 feet from the property lines of the site of the facility. This cleaning should occur before 8:00 a.m. each day.

*Analysis: The draft Resolution contains a condition of approval that requires the operator of the proposed use to clean the public right-of-way immediately adjacent to the subject site before 8:00 a.m. each day. The Property Business Improvement District (PBID) Downtown provides sidewalk cleaning services for the neighborhood at and in the vicinity of the project site, which meets the condition of approval.*

- b. Mechanical equipment used for outside maintenance, including blowers and street sweepers, etc., should not be used between 10:00 p.m. and 6:00 a.m. if the clean-up occurs within 500 feet of existing residential uses.

*Analysis: The draft Resolution contains a condition of approval that limits the operator of the proposed use to using mechanical equipment for outside maintenance only between the hours of 6:00 a.m. and 10:00 p.m.*

## 5. Typical Use Restrictions

- a. Nightclubs and bars should not operate after 2:00 a.m., daily.

*Analysis: The proposed use does not propose to operate after 2:00 a.m. daily.*

- b. The maximum occupancy of a nightclub or bar is limited to the number identified by the Fire Marshall, and may be further limited in the Conditional Use Permit based on parking availability or other land use compatibility issues.

*Analysis: The proposed project has been reviewed by the Fire Department and Building Division for general compliance with the California Fire Code and California Building Code. Both departments were satisfied with the proposed project. Further compliance and a more comprehensive review will be conducted by both departments during the Building Permit process.*

## Downtown Design Guidelines

Per the design guidelines, existing buildings and portions of blocks that have rehabilitative potential should be preserved to respect their original character, materials and design intent. There are no proposed exterior modifications to the existing building. The proposed use meets the Downtown Design Guidelines.

## CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Under the provisions of Section 15301(a) the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this Conditional Use Permit is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. Section 15301(a) exempts projects involving little or no expansion of use including interior or exterior alterations. This project is exempt as the proposed project involves minimal interior alterations and no exterior alterations. The project would have no or negligible expansion of the preexisting use and the use will occur within an existing building.


## PUBLIC HEARING NOTIFICATION

- ☐ **Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater.  
(Required: Website Posting)
- ☐ **Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City.  
(Required: E-mail and Website Posting)
- ☐ **Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. (Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)



Although this item does not meet any of the criteria above, staff followed Council Policy 6-30: Public Outreach Policy. A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

**Project Manager:** David Fong

**Approved by:** 

, Division Manager for Harry Freitas, Planning Director

**Date:** 5-5-15

<b>Attachments:</b>
Exhibit A: Police Memorandum
Exhibit B: Draft Resolution
Exhibit C: Reduced Plan Set

<b>Owner:</b>	<b>Applicant:</b>
Ellen C. Prandi et al. c/o J.T. Wakimoto Management 1855 Hamilton Avenue, #260 San Jose, CA 95125	Jenny Wolfes 1 <sup>st</sup> Street SJ Enterprise 58 South 1 <sup>st</sup> Street San Jose, CA 95113



# Memorandum

**TO:** David Fong  
Planning Department

**FROM:** Ofc. Mike Epp #3048  
San Jose Police Vice Unit

**SUBJECT:** Vanity SJ  
CP15-016  
58 S. 1<sup>st</sup> Street

**DATE:** April 10, 2015

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Approved

Date

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I have received your request for input regarding Vanity SJ. Vanity SJ is located at 58 S. 1<sup>st</sup> Street San Jose, CA 95113. Vanity SJ is seeking a Conditional Use Permit to allow a nightclub, restaurant and banquet hall with late night use until 2:00 a.m. in an existing tenant space.

Per Business and Professions (B&P) Code Section 23958, the State of California Department of Alcohol Beverage Control shall deny an ABC Application for an ABC License if the issuance of that license would tend to create a law enforcement problem or if it would result in or add to an undue concentration of ABC Licenses, as described in B&P Sections 23958.4 (a)(1) and 23958.4(a)(2). A location can be unduly concentrated because of its criminal statistics and/or it's proximity to other ABC Licenses. ABC can issue the license per B&P Sections 23958.4 (b)(1), and 23958.4 (b)(2) if the local governing body determines that the public convenience or necessity would be served. The City of San Jose Planning Department or the Planning Commission are the delegated authorities to grant these exceptions.

The location is not currently in a Strong Neighborhood Initiative area.

Vanity SJ is located in San Jose Police Beat E3. The reported crime statistics as defined by B&P Section 23958.4(c) **are** over the 20% crime index thus the location **is** considered unduly concentrated per B&P Section 23958.4 (a)(1) and B&P Section 23958.4 (a)(2).

## **Police Beat Crime Statistics**

Beat	Index Crimes	Arrests	Total	20% Above Average
E3 (2013)	394	334	728	Yes
City Average	333	171	504	

Department of Alcohol Beverage Control (ABC) records indicate Vanity SJ is in census tract 5009.01. Pursuant to B&P Section 23958.4 (a)(2), the ratio of on-sale retail licenses to population in census tract 5009.01 **does** exceed the ratio of on-sale retail licenses and licenses to population in the county in which the applicant premises are located.

### **Authorized and Current ABC Licenses in Census Tract 5009.01**

Census Tract	Authorized ABC Licenses as of August 2014		Current ABC Licenses as of April 2015		Unduly Concentrated	
	On - Sale	Off - Sale	On - Sale	Off – Sale	On - Sale	Off – Sale
5009.01	4	2	50	3	Yes	Yes

Given the location in the downtown entertainment zone and type of business, the San Jose Police Department is **neutral** to issuing a Conditional Use Permit to Vanity SJ if the following conditions are added to the CUP:

1. **Additional Permits.** The operator shall obtain and maintain all applicable permits from other agencies required per the San José Municipal Code including but not limited to required permits from the San Jose Police Department and a license from the State of California Department of Alcoholic Beverage Control (ABC).
2. **Age of Patrons:** If a restaurant use is instated, patrons under 21 years of age are permitted within the restaurant area, with the following exceptions: No patrons under the age of 21 years old shall be allowed within the establishment when it is operating as a drinking and entertainment establishment. The operator shall ensure that all persons under 21 years of age shall exit the establishment before 10:00 p.m. or before the drinking establishment uses commence, whichever is earlier.  
If the upstairs banquet room is being used for a private event with a separate entrance/exit and no patron access to the downstairs area, patrons under 21 years of age shall be allowed within the upstairs banquet room during the private event.

Please feel free to contact me at 277-4322 if you have any questions.

Ofc. Mike Epp #3048  
Administrative Officer  
Special Investigations/Vice

**RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSE GRANTING, SUBJECT TO CONDITIONS, A CONDITIONAL USE PERMIT TO ALLOW A PUBLIC DRINKING ESTABLISHMENT WITH A MAXIMUM OCUPANCY LOAD OF OVER 250 PERSONS AND AFTER-MIDNIGHT USE UNTIL 2:00 A.M. ON AN APPROXIMATELY 0.15 GROSS ACRE SITE, LOCATED ON THE EAST SIDE OF SOUTH 1<sup>ST</sup> STREET, APPROXIMATELY 400 FEET SOUTH OF EAST SANTA CLARA STREET (58 SOUTH FIRST STREET).**

**FILE NO. CP15-016**

**WHEREAS**, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on March 25, 2015, an application (File No. CP15-016) was filed with the City of San José for a Conditional Use Permit to allow after-midnight use until 2:00 a.m. for a Public Drinking Establishment for more than 250 people on an approximately 0.15 gross acre site on that certain real property situated in the DC Downtown Primary Commercial Zoning District, and located on the east site side of South 1<sup>st</sup> Street, approximately 400 feet south of East Santa Clara Street (58 South 1<sup>st</sup> Street, which real property is sometimes referred to as the "subject Property"); and

**WHEREAS**, the subject property is all that real property more particularly described in Exhibit "A," entitled "Legal Description," which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

**WHEREAS**, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the Planning Commission conducted a hearing on said application on May 13, 2015, notice of which was duly given; and

**WHEREAS**, at said hearing, the Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

**WHEREAS**, at said hearing, the Planning Commission made a recommendation to the City Council respecting said matter based on the evidence and testimony; and

**WHEREAS**, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, this City Council conducted a hearing on said application, notice of which was duly given; and

**WHEREAS**, at said hearing, this City Council gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

**WHEREAS**, at said hearing, this City Council received and considered the reports and recommendation of the City's Planning Commission and City's Director of Planning, Building, and Code Enforcement; and

**WHEREAS**, at said hearing, this City Council received in evidence a development/site plan for the subject property entitled, "Conditional Use Permit – 58 South 1<sup>st</sup> Street, San José, CA 95113," dated January 25, 2015. Said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

**WHEREAS**, said public hearing before the City Council was conducted in all respects as required by the San José Municipal Code and the rules of this City Council; and

**WHEREAS**, this City Council has heard and considered the testimony presented to it at the public hearing, and has further considered written materials submitted on behalf of the project applicant, City staff, and other interested parties;

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF  
SAN JOSÉ THAT:**

After considering all of the evidence presented at the Public Hearing, the City Council finds that the following are the relevant facts and findings regarding this proposed project:

1. **Site Description and Surrounding Uses.** The subject site is located on the east side of South 1st Street, approximately 400 feet southerly of East Santa Clara Street. Surrounding land uses include drinking establishments to the north and south; a parking lot to the east; and to the west are a drinking establishment, retail, and a parking garage (North 1<sup>st</sup> Street).
2. **Project Description.** The project is a Conditional Use Permit to allow a Public Drinking Establishment with a maximum occupancy load of over 250 persons and late night use until 2:00 a.m. in an existing 8,684 square foot building in the DC Downtown Primary Commercial Zoning District on an approximately 0.15 gross acre site.
3. **General Plan Conformance.** The subject site is designated Downtown on the Envision San José 2040 General Plan Land Use/Transportation Diagram. This designation includes office, retail, service, residential, and entertainment uses in the Downtown. All development within this designation should enhance the “complete community” in downtown, support pedestrian and bicycle circulation, and increase transit ridership. As a proposed late night drinking establishment use, this use is consistent with the uses allowed by this General Plan land use designation. Moreover, this type of use would encourage residents to come to the downtown area and increase pedestrian activity in the area. The project is also consistent with the following General Plan goal and policies:
  - a. Downtown Goal LU-3, in that the project will strengthen Downtown as a regional job, entertainment, and cultural destination and as the symbolic heart of San Jose.
  - b. Downtown Policy LU-3.1, in that the project supports employment, entertainment, and cultural uses in a compact and intensive form to maximize social interaction, and to further the vision of the Envision San José 2040 General Plan.
  - c. Downtown Policy LU-3.3, in that the project supports the development of Downtown as an arts, cultural, and entertainment center for San José and the region.
  - d. Downtown Policy LU-3.8, in that the project leverages Downtown’s urban nature and will help achieve economic, fiscal, environmental, cultural, social and other objectives of this plan.
  - e. Downtown Policy LU-3.7, in that the project recognizes the urban nature of Downtown and supports 24-hour uses and outdoor uses, while not causing significant adverse impacts.



4. **Zoning Ordinance Compliance.** This Project complies with all applicable provisions of the Zoning Ordinance in that Public Drinking Establishments with an approved maximum occupancy load of over 250 persons and that operate between 12:00 a.m. (midnight) and 6:00 a.m. are allowed through the discretionary Conditional Use Permit process in the DC Downtown Primary Commercial Zoning District.
- a. Parking Requirement: The subject site is located in the Downtown Parking Management Zone. The Zoning Ordinance does not require any parking for legal nonconforming structures that are on parcels that are 10,000 square feet or less with up to 30,000 square feet of building area located in the Downtown Parking Management Zone.
5. **Conditional Use Permit Findings.** Chapter 20.100 of Title 20 of the San José Municipal Code establishes required findings for issuance of a Conditional Use Permit. This City Council concludes and finds, based upon an analysis of the above facts that:
- a. The proposed use at the location requested will not:
- i. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
  - ii. Impair the utility or value of the property of other persons located within the vicinity of the site; or
  - iii. Be detrimental to public health, safety or general welfare.

*Analysis: The project is in conformance with the required findings to recommend approval of the Conditional Use Permit. Conditions have been included to mitigate adverse impacts that may arise due to the late-night use of a public drinking establishment for more than 250 people. The project is consistent with the Council Policy on Late Night or 24-Hour Uses and the Council Policy on Bars and Nightclubs in that the adjacent uses are a nightclub, bar, retail, and parking facilities. The new use is compatible with the surrounding community. The adjacent bars and nightclub have similar hours of operation. Moreover, the Police Department is neutral to this project, and security measures have been put in place to ensure the safety of the patrons attending the venue as well as the area surrounding the venue.*

*The proposed use is also employing appropriate measures to minimize any noise produced by the venue, by orienting speakers away from windows and doors, shutting the doors when music is playing, and limiting the way patrons can enter and exit the facility. There is an existing outdoor patio that will be utilized by the proposed project; however, music will not be provided in the outdoor area. The adjacent uses are bars, nightclubs, and parking that will not be affected by any noise. The closest residential property to the site is over 250 feet away, which is buffered by a surface parking lot in between. If the sound level becomes a nuisance, the applicant will be required to redress the nuisance and come into conformance with the City's noise requirements.*

- b. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and

*Analysis: The subject site is in compliance with the applicable development standards of the San Jose Municipal Code. This project is in the DC Downtown Primary Commercial Zoning District and does not require parking facilities. The subject site is also adequate in size and shape to accommodate the proposed drinking establishment. There are no exterior modifications proposed.*

- c. The proposed site is adequately served:
  - i. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
  - ii. By other public or private service facilities as are required.

*Analysis: The subject site is well-served and easily accessible from public streets as it is located on the east side of South 1st Street, approximately 400 feet southerly of Santa Clara Street. In addition, a Santa Clara Valley Transportation Authority (VTA) light rail line operates along South First Street. As conditioned, the proposed use will not result in significant impacts on the level of service currently provided by surrounding highways and streets.*

- 6. **Environmental Review.** Under the provisions of Section 15301(a) the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this Conditional Use Permit is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. Section 15301(a) exempts projects involving little or no expansion of use including interior or exterior alterations. This project is exempt as the proposed project involves minimal interior alterations and no exterior alterations. The project would have no or negligible expansion of the preexisting use and the use will occur within an existing building.

In accordance with the findings set forth above, a Conditional Use Permit for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **approved**. The City Council expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

**APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:**

1. **Acceptance of Permit.** Per Section 20.100.290(B) of Title 20 of the San José Municipal Code, should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
  - a. Acceptance of the Permit by the applicant; and
  - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this Permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically expire two (2) years from and after the date of issuance hereof by the City Council, if within such time period, a Building Permit has not been obtained or the use, if no Building Permit is required, has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment must be approved prior to the expiration of this Permit.
3. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
4. **Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this Conditional Use Permit shall be deemed acceptance of all conditions specified in this Conditional Use Permit and the permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.

5. **Conformance to Plans.** The development of the site shall conform to the approved Conditional Use Permit plans entitled, "Conditional Use Permit – 58 South 1<sup>st</sup> Street, San José, CA 95113," dated January 25, 2015, on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24), as may be amended subject to City's approval, and to the San José Building Code (San José Municipal Code, Title 24), as amended. The plans are referred to herein as the "Approved Plan Set".
6. **Additional Permits Required.** The permittee shall secure any and all necessary permits required for the development of this site and/or implementation of this use including, but not limited to permits from Department of Public Works, Fire Department, and the Building Division. The permittee shall conduct the use in full compliance with all required licenses and permits, including but not limited to its license issued by the Department of Alcoholic Beverage Control.
7. **Use Authorization.** This Conditional Use Permit authorizes a Public Drinking Establishment (with a maximum occupancy load of more than 250 people) to operate until 2:00 a.m., subject to terms and conditions of this Permit.
8. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
9. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
10. **Compliance with Laws.** The subject use shall be conducted in full compliance with all local, state, and federal laws and regulations.
11. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 Title 20 of the San José Municipal Code.
12. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. Trash areas shall be maintained in a manner to discourage illegal dumping.
13. **Outdoor Storage.** No outdoor storage shall be allowed or permitted unless designated on the Approved Plan Set.
14. **Anti-Graffiti.** The permittee shall remove all graffiti from buildings, fences, and wall surfaces within 48 hours of defacement.
15. **Anti Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris:
  - a. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage and shall include daily damp washing of all exterior walls and sidewalks along the project's frontage.

- b. The permittee shall clean the public right-of-way immediately adjacent to the subject site before 8:00 a.m. each day, unless it is a participant in a Property Business Improvement District which provides such sidewalk cleaning services for the neighborhood in the vicinity of the project site, including the immediately adjacent public right-of-way.
  - c. Mechanical equipment used for outside maintenance, including blowers and street sweepers may not be used between 10:00 p.m. and 6:00 a.m. daily.
16. **Operations and Management Plan.** The establishment shall operate in a manner consistent with the Operations and Management Plan ("Operations and Management Plan") on file with the Department of Planning, Building and Code Enforcement and incorporated herein by this reference. If any element of the Operations and Management Plan conflicts with any conditions included in this Permit, the conditions of the Permit shall take precedence. Any change to the Operations and Management Plan shall require approval of the City of San José through the appropriate decision-making body in the form of a Permit Adjustment or Amendment. The approved Operations and Management Plan includes, but is not limited to, the following requirements:
- a. **Hours of Operation.** The establishment shall operate between the hours of 6:00 p.m. and 2:00 a.m. seven days a week.
  - b. **Bar Layout.** The bar layout must correspond to the location of the bar on the Approved Plan Set.
  - c. **Security.** Per the Operations and Management Plan, and the required Public Entertainment Permit, security shall be provided on-site during operation.
17. **Alcohol Service.** The permittee shall obtain and maintain the required license from the Department of Alcoholic Beverage Control (ABC). Alcohol service shall be in compliance with the issued ABC license.
18. **Noise and Acoustics:**
- a. All noise generating activities, or activities including the use of amplified sound, shall be held within the establishment, as indicated in the Operations and Management Plan
  - b. All windows and doors for the facility shall remain shut during all hours when amplified sound is used within the premises, so that noise is not audible outside the premises.
19. **Disturbance Coordinator.** The permittee shall implement the following:
- a. Provide an on-site disturbance coordinator during all hours of operation;
  - b. Post contact information for the disturbance coordinator in a prominent location within the establishment near the primary entrance;

- c. Maintain a complaint log including the time and content of all complaints and a summary of the time and nature of the establishment's response to each complaint.
  - d. Ensure that the log is kept current and is available on the project site for inspection by City staff.
20. **Entertainment.** The permittee shall obtain and maintain the appropriate Public Entertainment Permit issued by the San José Police Department.
21. **Vendor Delivery Parking.** The permittee shall discourage vendors from parking delivery vehicles illegally on City streets and shall identify to vendors the available legal loading and unloading zones.
22. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
23. **Loitering.** Loitering shall not be allowed in the public right of way adjacent to the subject site.
24. **Recycling.** Scrap construction and demolition material shall be recycled. Integrated Waste Management staff at (408) 535-8550 can provide assistance on how to recycle construction and demolition debris from the project, including information on available haulers and processors.
25. **Building Division Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements shall be met to the satisfaction of the Chief Building Official:
- a. *Construction Plans.* This permit file number, CP15-016, shall be printed on all construction plans submitted to the Building Division.
  - b. *Americans with Disabilities Act.* The applicant shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
  - c. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.
26. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the City Council at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:
- a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or



- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

Based on all of the above facts and findings for this Conditional Use Permit application, this proposal to allow after-midnight use until 2:00 a.m. a Public Drinking Establishment for more than 250 people on the subject site is hereby **approved**.

**APPROVED** this **9<sup>th</sup> day of June, 2015**, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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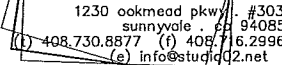
SAM LICCARDO  
Mayor

ATTEST:

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TONY J. TABER, CMC  
City Clerk





## 01.25.15 ISSUED FOR C.U.P. SUBMITTAL

PROJECT NO.: 15-5180

EXISTING SITE PLAN  
EXISTING GROUND FLOOR PLAN



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3/16"	
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CONDITIONAL USE PERMIT

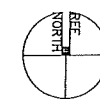
**58 SOUTH 1ST STREET**

SAN JOSE . CA 95113

01.25.15 ISSUED FOR C.U.P. SUBMITTAL

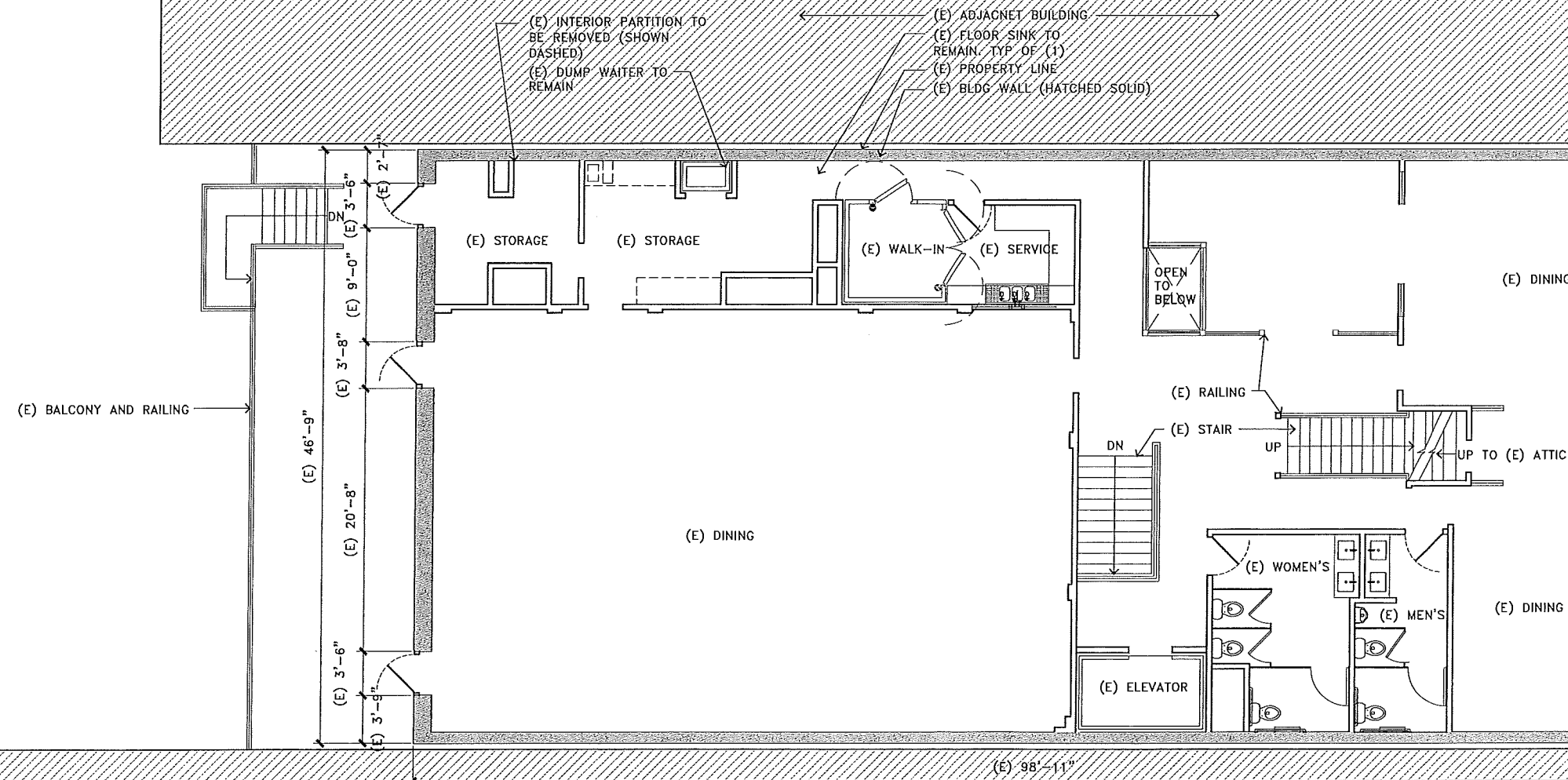
PROJECT NO.: 15-5180

EXISTING 2ND FLOOR PLAN



A1.5

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EXISTING 2ND FLOOR PLAN

3/16"

1

CONDITIONAL USE PERMIT

**58 SOUTH 1ST STREET**

SAN JOSE . CA 95113

01.25.15 ISSUED FOR C.U.P. SUBMITTAL

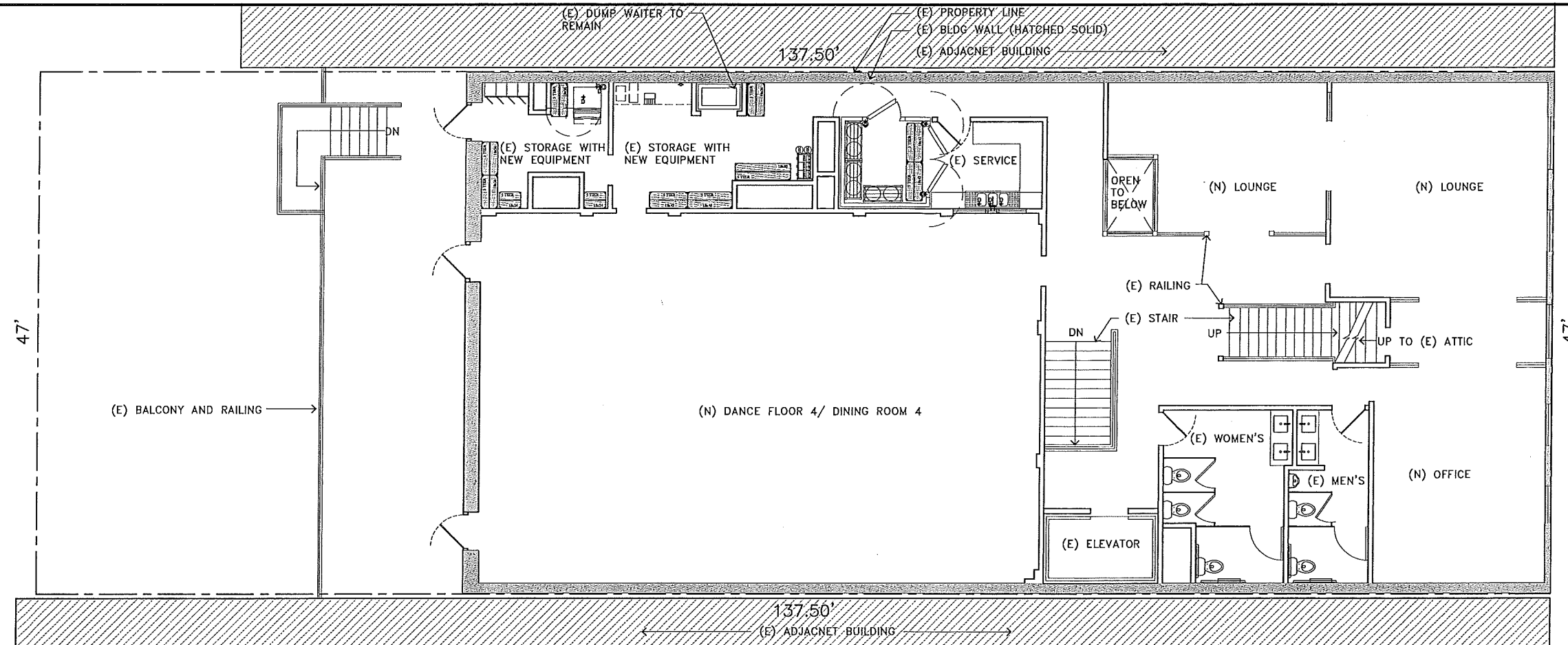
PROJECT NO.: 15-5180

PROPOSED FLOOR PLANS



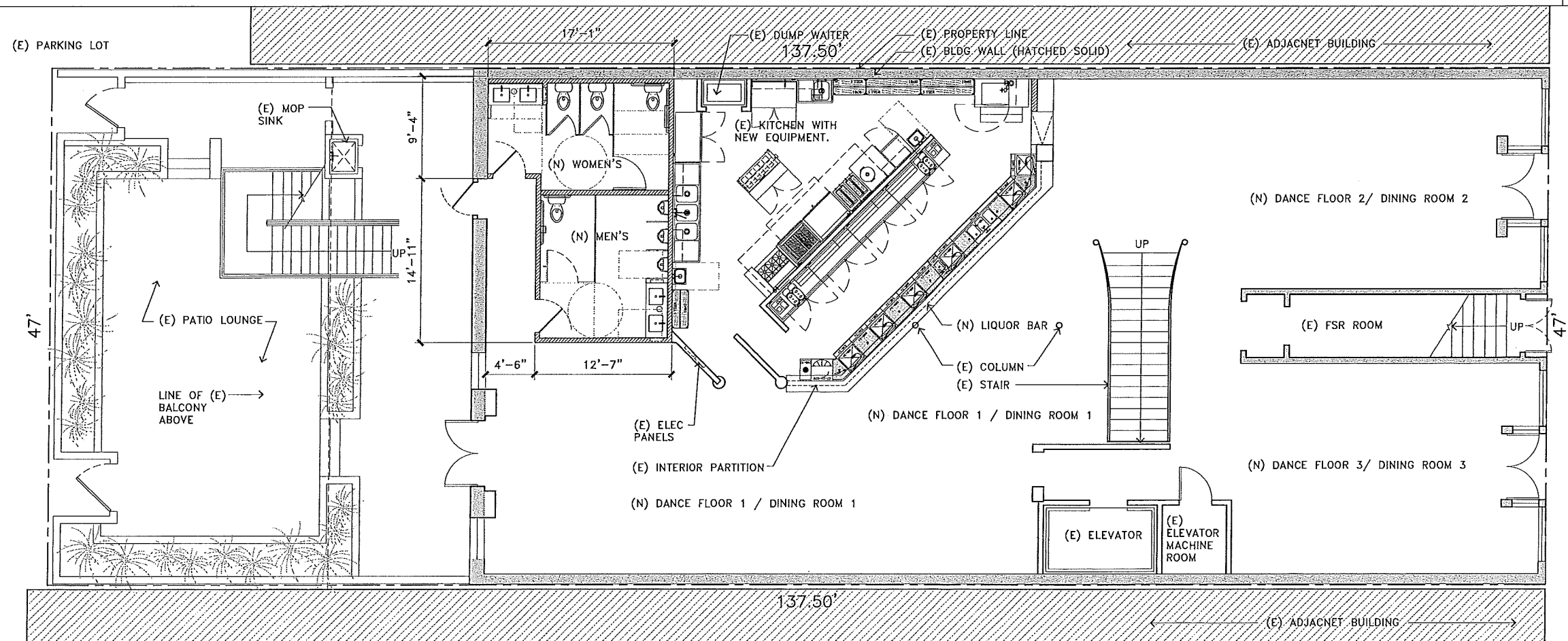
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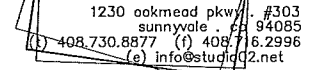
PROPOSED SECOND FLOOR PLAN

3/16" 1



PROPOSED GROUND FLOOR PLAN

3/16" 1

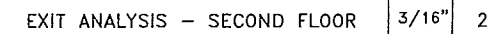


# CONDITIONAL USE PERMIT

PROJECT NO.: 15-5180

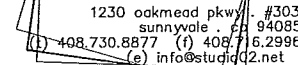
EXIT ANALYSIS -  
DINING

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EXIT ANALYSIS - GROUND FLOOR	3/16"	1
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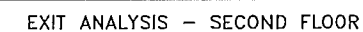




# CONDITIONAL USE PERMIT

PROJECT NO.: 15-5180

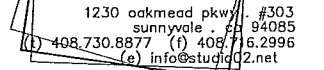
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3/16"	2
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EXIT ANALYSIS - GROUND FLOOR

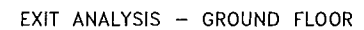
3/16"	1
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# CONDITIONAL USE PERMIT

PROJECT NO.: 15-5180

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**The following  
items were  
received after  
packets were  
distributed.**

# CP15-016, PC 5/13 Item 3.a. – Correspondence from Hopkins & Carley

Teresa Castro <tcastro@hopkinscarley.com>

Wed 5/13/2015 1:52 PM

Inbox

To: ed@abelite.com <ed@abelite.com>; edesab@yahoo.com <edesab@yahoo.com>; kline@libraryworld.com <kline@libraryworld.com>; brian.ohalloran@att.net <brian.ohalloran@att.net>; nick@nickpham.com <nick@nickpham.com>; Dori L. Yob <dyob@hopkinscarley.com>; ballardshiloh@gmail.com <ballardshiloh@gmail.com>; Jay Ross <JRoss@hopkinscarley.com>; Jeffrey Essner <JEssner@hopkinscarley.com>;

Cc: Lee, Sandra <Sandra.Lee@sanjoseca.gov>; Hughey, Rosalynn <Rosalynn.Hughey@sanjoseca.gov>; Beasley, Mary <Mary.Beasley@sanjoseca.gov>; Freitas, Harry <Harry.Freitas@sanjoseca.gov>;

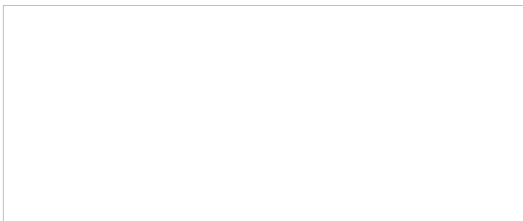
 1 attachment (215 KB)

2015 0513 HC ltr to City of San Jose .pdf;

Good afternoon –

Please see the attached correspondence related to Item 3(a) on tonight's Planning Commission Agenda (Item CP15-016). Hard copies will also be available at the meeting.

Thank you,



Teresa Castro  
Legal Secretary

70 South First Street,  
San Jose, California 95113-2406  
Direct: 408.299.1306  
Main: 408.286.9800  
Fax: 408.998.4790  
[tcastro@hopkinscarley.com](mailto:tcastro@hopkinscarley.com)

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Any tax advice contained in this correspondence (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding

tax-related penalties under federal, state or local tax law or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

This email and any attachments thereto may contain private, confidential, and privileged material for the sole use of the intended recipient. Any review, copying, or distribution of this email (or any attachments thereto) by others is strictly prohibited.

SAN JOSE  
THE LETITIA BUILDING  
70 S FIRST STREET  
SAN JOSE CA 95113-2406  
T 408.286.9800  
F 408.998.4790

PALO ALTO  
200 PAGE MILL ROAD  
SUITE 200  
PALO ALTO CA 94306-2062  
T 650.804.7600  
F 650.804.7630



MAILING ADDRESS  
PO BOX 1469  
SAN JOSE CA 95109-1469  
hopkinscarley.com

May 13, 2015

JEFFREY E. ESSNER  
Shareholder  
jessner@hopkinscarley.com  
408-286-9800

***Via E-Mail and Hand Delivery***

City of San Jose  
Honorable Members of the Planning Commission  
200 East Santa Clara Street  
San Jose, CA 95113-1905

***Re: File No. CP15-016 (Vanity SJ)***

Dear Honorable Members of the Planning Commission:

I am the Managing Shareholder of Hopkins & Carley, A Law Corporation, located at 70 South 1st Street in San Jose. We recently learned that the Planning Commission ("Commission") will be considering an application for a Conditional Use Permit ("CUP") at its meeting tonight with respect to the former Bella Mia restaurant space located at 58 South 1<sup>st</sup> Street. At the outset, we request that this matter be deferred so that Hopkins & Carley can discuss the item with Staff and/or the project applicant. There has been no dialogue up to this point as we did not receive a hearing notice and only learned of this item by reviewing the Commission agenda.

Hopkins & Carley has resided in the Letitia Building, a designated historical landmark, since 2001. We are proud of the building and our city, and are excited to be part of the exciting changes that are occurring in downtown San Jose. We support the goal of promoting projects that will help achieve the goals of the Envision San Jose 2040 General Plan, including projects that will enhance the vibrancy and business diversity of the downtown area.

By way of background, Hopkins & Carley has been in San Jose for over 45 years. We employ over 120 attorneys and non-attorneys in our offices. Because we are a client-driven business, we do not close our doors at a specific time. Our attorneys and staff often work into well into the evening and on weekends. This "after hours" work frequently involves meeting or conferences with clients. Although not mentioned in the Staff Report, we note that our building entrance is less than 200 feet from the proposed Vanity SJ site and we are the largest tenant on the city block. In addition, a portion of the [east] side of our building shares a common wall with the [west] side of the Vanity SJ site. We will therefore be directly impacted by the operations of the proposed Vanity SJ project.

Given the nature of our business, and our proximity we have several specific concerns regarding the Vanity SJ project, and the CUP that is being considered by the Commission.

1. Council Policy 6-23(1)(c) provides that “new nightclub and bars that are not open during daytime hours should not occupy more than 30 percent of the street frontage on any one side of the street.” The staff report contains no analysis of this issue. There are currently 4 other nightclubs and bars on our side of the street that are not open during daytime hours including, Paper Plane (72 South First Street), The Temple (52 South First Street), Nomiaki (48 South First Street), and Club Lido (30 South First Street). A guiding principal of the Envision San Jose 2040 General Plan is to attract more jobs. As the City continues to spend considerable time and resources to accomplish that goal, it becomes critical that we create a vibrant space for employees. The former tenant, Bella Mia Restaurant, was a prime location for business lunches and dinners for our law firm and the other business located in and around 1<sup>st</sup> Street. Additionally, we (and other businesses and organizations) routinely used the large banquet room on the second floor of the Pomeroy-Skerritt Building for department meetings, presentations, and other meetings that could not be accommodated in office buildings. The proposed use by Vanity SJ will result in another building on 1st Street that will be closed during the day; limiting the activation of a critical street at the core of our great City. ***For this reason, we request that the Commission recommend denial of the CUP.***
2. We have significant concerns regarding the number of people that may occupy Vanity SJ if the CUP is granted. Council Policy 6-23(1)(3) provides that “new nightclubs should include sufficient space to accommodate queuing for patrons. This space should be provided on-site to the greatest extent possible.” There is insufficient space in front of the proposed site to allow for queuing of up to 669 patrons. We are extremely concerned about the outdoor queuing of possibly hundreds of patrons outside of our offices as our employees and clients are entering and exiting our premises. We also note that the sidewalk is not wide, and there are light rail tracks on 1st Street; we think this could create a dangerous situation if hundreds of people are required to queue along the street. ***For these reasons, we request that the Commission recommend denial of the CUP or alternatively, consider limiting the occupancy to 250, which is the maximum occupancy that would be allowed under the Zoning Ordinance without a CUP.***
3. We have significant concerns about the hours of operation. We frequently have clients, attorneys and staff in our premises into the evening, especially during the week nights. ***For this reason, we request that the Commission recommend denial of the CUP or alternatively, in order to ensure that our operations will not be adversely affected by Vanity SJ, we request that the hours of operation of the nightclub be limited to 10 PM – 2 AM on Thursday, Friday, and Saturday nights, and that the nightclub not operate on Sunday through Wednesday nights.***



4. We believe that the Vanity SJ project will create significant noise issues in our building as we share a wall with a portion of the Vanity SJ premises and we have attorneys who have offices along the shared wall. Council Policy 6-23(2)(a) provides "Sound attenuation techniques may be required to buffer adjacent interior and exterior spaces from noise generated by a nightclub or bar use." Council Policy 6-27(1)(f) also states "Use of sound attenuation walls...may be required at property lines in order to minimize noise emanating from the site." Anytime there is music playing at one of our downstairs or adjacent neighbors, it can be heard in our building. We are seriously concerned about the sound that may be generated by a nightclub with 4 dance floors and up to 669 patrons. ***For this reason, we request that the Commission recommend denial of the CUP. Alternatively, in order to ensure that noise does not disrupt our business, we request that the Commission consider requiring additional soundproofing along the common wall, and limit the use of the outdoor patio to hours in which the nightclub is open. We further request that consistent with Council Policy 6-23(2)(B), windows and doors should not be open during the operation of the facility and that adequate ventilation be provided so that openings to the outside can be closed when the bar or club is at full capacity.***
5. We are concerned about ventilation. We understand that Vanity SJ will begin serving food at 6pm. However, cooking will begin hours earlier. Cooking odors permeating our office was an issue with the prior tenant, as well. ***In order to ensure that the odors do not create permeate our premises; we request that the Commission require appropriate venting of the cooking premises.***
6. We are concerned about cleanliness of the area directly in front of our building. We note that there is a condition in the resolution that requires the nightclub and bar operators to provide daily cleaning of the public right-of-way up to 200 feet from the property lines before 8:00 am each day. ***We request that this condition be modified to require the area directly in front of our building to specifically be cleaned and cleared of any and all debris.***
7. Regardless of whether Vanity SJ patrons are permitted to queue in front of our premises, we are concerned that they may congregate in front of our building, before, during, and after Vanity SJ hours of operation. We believe this will result in unsafe situations for our attorneys, staff and clients, as well as residual cigarette butts, bottles, vomit, urine, etc. ***Because we are a business that does not have 9-5 hours, we request that the Commission consider ways to establish a protective zone around our entrance area at any time that Vanity SJ is in operation, through the use of a stationed security guard and/or ropes to cordon-off the entrance to our building.***

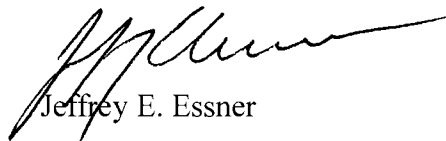
8. Council Policy 6-23(5)(g) provides that "...Compliance Reviews may be required and should include an evaluation of the operation as well as any subsequent reports required as part of the permit approval." ***Given the concerns outlined above, we request that if the Commission recommends approval of the CUP, that it include a condition requiring an annual Compliance Review before the Planning Commission.***

Based on this information, we do not believe the Commission can find that the proposed CUP conforms with (1) the Envision San Jose 2040 General Plan; (2) City Council Policy 6-27: Evaluation of 24-Hour Uses; or (3) Council Policy 6-23: Guidelines for Evaluation of Nightclubs and Bars. We therefore request that the Planning Commission recommend denial of this CUP to the City Council, or at the very least, recommend approval with the modifications requested above.

Thank you for your consideration.

Sincerely,

HOPKINS & CARLEY  
A Law Corporation



Jeffrey E. Essner

Cc: Harry Freitas  
Rosalynn Hughey  
Sandra Lee

**From:** Scott Knies

**Date:** Wed, May 13, 2015 2:47 PM

**To:** Hughey, Rosalynn;

**Cc:** Chris Neale;

**Subject:**Planning Commission agenda item tonight

hi Rosalynn, sorry for the short notice but we see some issues with this CUP tonight (see attached letter) and it might be good to work them out at Planning Commission level rather than City Council. However, the community needs a bit more time for this. I am going to ask Jenny (applicant) to meet with some neighbors and present her plans at our next Historic District committee meeting.

Can you forward our letter to Planning Commissioners? Thanks, Scott

--

Scott Knies

Executive Director

San Jose Downtown Association

28 N. First Street #1000

San Jose, CA 95113

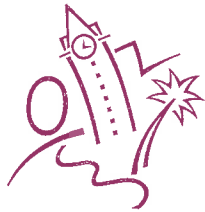
(408) 279-1775, ext. 317

(408) 279-1904 fax

[sknies@sjdowntown.com](mailto:sknies@sjdowntown.com)

<http://www.sjdowntown.com>

**Join us on Facebook** <http://www.facebook.com/sjdowntown>



**SAN JOSE DOWNTOWN  
ASSOCIATION**

28 N. FIRST STREET  
SUITE 1000  
SAN JOSE, CA 95113  
TEL: 408-279-1775  
FAX: 408-279-1904  
WWW.SJDOWNTOWN.COM

May 13, 2015

Chairperson Dori Yob  
City of San Jose Planning Commission  
200 E. Santa Clara Street  
San Jose, CA 95113

RE: CP15-016 – Vanity nightclub

Dear Planning Commission Chair Yob and fellow commissioners,

The San Jose Downtown Association requests this CUP on your agenda tonight be deferred to allow for more community outreach and for neighbors to understand better the large nightclub use being proposed for the site.

We have heard from several members in the vicinity of the project they are completely unaware of the pending application and use. Our office, for instance, did not receive any project notification. Our concern is that other property owners and tenants within the 500 foot radius also did not receive adequate notification.

While we are pleased to see that a business has come forth to fill the vacant retail space at 58 S 1<sup>st</sup> St. (formerly Bella Mia restaurant), we believe additional community outreach is needed for a proposed 669 occupancy club in the heart of downtown's Historic District.

Thank you for your consideration.

Sincerely,

Scott Knies  
Executive Director

cc: Rosalynn Hughey, Assistant Planning Director  
Jenny Wolfes, applicant  
Chris Neale, SJDA President

May 18, 2015

Hopkings & Carley  
Mr. Jeffrey Essner  
70 S. First Street  
San Jose, CA 95113

Re: CP15-016 Response to Letter dated 5/13/2015

Dear Mr. Essner,

Thank you and your colleagues for taking time to meeting with us on Friday, May 15, 2015 to review the concerns outlined in your letter to the Planning Commission regarding the operation (Vanity SJ) of a restaurant, lounge and banquet use at 58 S. First Street.

The meeting dialogue provided insight to both groups regarding the proposed operation, your business operation, and the condition of South First Street between W. Santa Clara and W. San Fernando Streets.

You stated that the most important issues were 1.) Noise, 2.) Security, 3.) Cleanliness. However, we are responding to your eight (8) concerns point by point with our proposed action and with information that will support our intent to operate in a responsible manner as we have at our other two downtown business venues for the last 12 years. We have invested in Downtown San Jose just as you have and wish to invest further with our new business Vanity SJ.

Response to specific concerns as listed in your letter.

**Concern 1.** That with the addition of our use on S. First Street between San Fernando and W. Santa Clara Street there will be *more* than 30% of the street frontage with closed businesses during the day.

**Response:** Including Vanity SJ there will be 27% street frontage closed during the day (see attached). Even without lunch service, there will be activity as we plan to book private events throughout the day such as breakfast and luncheon meeting plus use of the second floor for corporate events, weddings and meetings. It may take three to six months to build this portion of the business utilizing our fifteen years of marketing experience and media contacts.

A viable dinner business must be achieved before we consider opening for lunch. In addition, a.) The economy has not adjusted enough to support a lunch business, b.) Sit down lunch service has trended away from this portion of the block, and c.) San Pedro Square has drawn a large portion of the lunch crowd away from the downtown center, d.) Fountain Alley Parking Lot has increased their fee to \$6 per hour making it difficult to entice lunch crowds to this area. The cost of parking in general and the lack of validated parking makes downtown a challenge for destination lunchtime dining.

To create daytime interest in the storefront, a window treatment consisting of murals that complement the street character and the business theme are planned and will be in place before we open for business. The Downtown Association has successfully used murals and window staging to bring life to blank storefronts as have landlords.

Concern 2. Number of occupants and queuing that may overlap to the Security Building, 70 S. First Street where Hopkins & Carley is located.

Response: The queuing lines will be in front of the building controlled by stanchions and security personnel.

Sundays and Mondays will consist of special events only. Tuesdays and Wednesdays will be mostly happy hour, dinner, and a small crowd for late night entertainment unless it is a special event. Thursday, Friday, and Saturday will be the larger nights. Thursdays are seasonal and tend to be busier during summer. Fridays and Saturdays are the higher occupancy nights like everything else on the street

Concern 3. Nightclub hours of Operation, limit nightclub operation 9 pm – 2 am, Thursday, Friday and Saturday.

Response: Hours of operation will not affect the neighboring business as,

- a.) Vanity SJ will be closed on Sunday and Monday except for special events day or evening.
- b.) Tuesday and Wednesday only the first floor will be used unless there is a special event or a banquet is scheduled upstairs. Since, Tuesday and Wednesday nights tend to be slower nights the full use on those two days may consist of less than 50 – 250 persons,
- c.) *The full nightclub operation will primarily be open Thursday thru Saturday, which accommodates your request.*
- d.) Events may consist of weddings, business seminars, dinners that will have attendees that mirror Hopkins & Carley clients. We are as concerned about the environment our customers will encounter when they come to First Street. We will do all we can to make it comfortable and worthwhile for them by working with our neighbors and our staff to maintain the area in clean and safe condition.

Concern 4. Sound attenuation techniques. *Hopkins & Carley do not maintain normal office hours working late on some nights. Their offices are located on the second and third floors of their building.*

Response: a.) Any doorways, gaps in the second floor, in particular in the 12' wide second floor service area/hall that could allow sound to penetrate to the adjacent offices will be sealed with the appropriate product such as heavy drapery, acoustic curtains or caulking. *Every effort will be made to prevent noise from emanating beyond the premises.*

b.) Only ambient music will be played on the second floor during the normal workday until 6 PM, Monday through Friday.

The first floor does not have any offices on the other side of the wall so there should not be any noise issues.

c.) Sound equipment, speakers will face away from the connecting wall. It has been proven that proper placement of sound equipment will direct sound where needed. With fifteen (15) years of experience, and multiple buildings with different noise challenges we will have the proper equipment to establishment sound levels that will meet the needs of the neighbors and our customers.

d.) A sound limiter that does not allow DJs to raise the volume on their equipment will be installed on all the sound equipment.

e.) A DB meter will be used to measure sound levels and to set the limiters.

We will take additional steps to address sound issues should it be necessary once Vanity SJ opens .

Concern 5. Ventilation and cooking odors.

Response: The cooking area and equipment will be reduced by 60%. The large cook line in front and rotisserie that caused the majority of the odors will be eliminated. There will be a normal size cook line with only four (4) pieces of cooking equipment. Quarterly grease trap cleaning will be scheduled. The proposed menu (see attached) is not extensive and does not require lengthy preparation, as did the Bella Mia menu.

Concern 6. Area cleanliness, 200' radius.

Response: a.) The front of Vanity SJ front will be cleaned every night at the close of business as per the CUP condition.

b.) Working with the Downtown Business Association, a meeting is scheduled for May 27, 2015 with other late night businesses on the block to make sure everyone has a designated cleaning area in addition to their frontage since the 200' called out in your letter overlaps to other businesses, in particular two, Paper Plane and Gravity that are adjacent to Hopkins & Carley's door way and under their offices.

c.) The management of the privately owned parking garage across the street has been contacted regarding their cleaning timeline and process and invited to attend the preliminary business meeting and then the Entertainment Committee meeting coordinated by the Downtown Association. Future business and committee meetings can be hosted by Vanity SJ.

d.) **Homeless:** Businesses are being impacted by the homeless that have adopted Downtown Core as a safe place to sleep. Storefronts and sidewalks are cleaned, lights are turned off at 2:30 am, and then another population takes over. Urine, feces, debris of all kinds appear over night that have nothing to do with the late night businesses. That cleanliness challenge will be discussed at the preliminary late night business owner meeting, The Historic District Committee and at the Entertainment Committee.

Concern 7. Hopkins & Carley doorway, security.

Response: a.) As requested, we will place a stanchion at the Hopkins & Carley doorway, 70 S. First Street when we are operating as a nightclub.

b.) Security cameras will be placed to record activity in front and north and south of Vanity SJ. Footage can be used to evaluate security, cleaning by late night operators and in general, street activity any night.

b.) When the nightclub is operating we will provide security at night to Hopkins & Carley staff to get to their cars at the nearby parking garage.

c.) There are two bars adjacent to their door way that are part of the building that may have customers congregating at the doorway to smoke, in particular, because it is well lit. This item will be discussed with the other late night business owners when we meet next week.

d.) Vanity SJ procedures include getting our customers in quickly and efficiently, and having them exit from front and back. Security will clear the area to avoid after party issues and loitering in front of the storefronts.

Concern 8. Request annual compliance review by the Planning Commission.

Response: We have a significant investment in downtown San Jose with Vanity SJ and with two other businesses that in 12 years have never been a nuisance or caused any issues that required a compliance review or any police concerns. A business owner, downtown investor needs the security that a permanent permit provides. An annual compliance review permit condition *does not* provide that security, assurance. There are other tools, methods to gauge and sustain performance such as the complaint log maintained by the required Disturbance Coordinator, police reports that are public information and the Entertainment Permit that must be renewed every four years otherwise entertainment must cease. We are also major stakeholders like Hopkins & Carley and will do everything possible to maintain our business in accordance with the CUP conditions. We also have created jobs, at present, we have 50+ employees. With Vanity SJ that number will jump to 90+.

We hope that the sound attenuation measures, reduced venting needs, transparency with hours of operation, communication with other late night operators and the nearby private garage, all the information that we have provided has addressed your concerns. **In addition, we propose a change to the proposed condition 15. Anti Litter, b. "... clean by 8 AM " to 6 AM and the addition to 16. Security, c. "Stanchions shall be placed at 70 S. First Street when the night club is in operation," as you requested.**

The response to the concerns expressed by your self on behalf of Hopkins & Carley was thoughtfully done to assure that we are able to perform what we propose to do. We believe that the Commission with the additional information will find that the proposed CUP with minor changes will address the needs that were expressed by Mr. Essner in his letter. We are serious about being good neighbors and have offered our contact information (Jenny Wolfes) so that we can be called at the moment that there is an issue that requires our attention.

Mr. Essner, we look forward to your support of our request for a Conditional Use Permit.

Sincerely,

*Jenny Wolfes*

1<sup>st</sup> Street SJ Enterprise  
Jenny Wolfes

Attachments

CC: Harry Freitas

Planning Commission

Councilmember Peralez

Jean Cohen, Policy Aide District 3

Scott Knies

David D. Fong

Emily Lipoman

Chloe Verrey

Avril Baty

Juan Borelli



# WHAT IS VANITY?

A FUSION OF CAREFREE, FUN FOOD AND MUSIC IN AN ATMOSPHERE  
EQUALLY FUN AND FULL OF PEOPLE ENJOYING THEMSELVES AFTER A DAY  
OF SHOPPING OR WORK.

## VANITY

58 S 1ST SAN JOSE CA 95113

### CHOICE OF MEAT

POLLO ASADA - CHICKEN - CARNE ASADA - BEEF  
CHILE VERDE - PORK / TORNATILLO - CARNITAS  
BRAISED PORK

### APPETIZERS

**CHIPS AND SALSA \$3.50**  
**CHIPS AND GUACAMOLE \$3.95**

Fresh avocados, pico de gallo and fresh lime juice

**NACHO'S \$6.95**

crisp chips topped with , refried beans, a trio of melted cheese, fresh guacamole and pico de gallo.

**HOT and SPICY WINGS \$6.95**

Chicken wings in your choice of our Mexican BBQ or spicy wing sauce served with homemade ranch dip

### TACOS

**CLASSIC TACO \$6.95**

Choice of meat with beans, cheese and salsa.

**FISH TACO \$4.95**

Fried fish, pico de gallo, shredded cabbage and salsa

**VEGGIE TACO \$3.95**

fresh veggies, cheese, salsa fresca, black beans, and salsa

**SHRIMP TACO \$5.95**

Grilled shrimp, pico de gallo, shredded cabbage and salsa

### BURRITOS

**CLASSIC BURRITO \$7.95**

Choice of meat ,rice,cheese,beans,and Pico de gallo

**SHRIMP BURRITO \$9.95**

Grilled Shrimp Rice, beans,jack cheese,and Pico de gallo

**GRILLED VEGGIE BURRITO \$6.95**

Garden fresh veggies, guacamole, cilantro rice, cheese, salsa fresca, black beans, and salsa

**BEAN AND CHEESE BURRITO \$5.95**

pinto beans and cheese.

**CLASSIC QUESADILLA \$6.95**

A flour tortilla, Monterey Jack cheese and salsa with fresh guacamole and sour cream on the side.

**S. First Street Frontage Measurements  
Between W. Santa Clara and  
W. San Fernando Street**

Street no.	Business name	frontage (FT) - open daytime	frontage (FT) - close daytime	total (FT)
8	Studio 8		58	8%
12	Office	13		2%
14	R&J Jewwlrly	53		8%
	Fountain Ally/ parking lot	82		12%
30	Lido	32		5%
34	Tattoo	8		1%
36	Medical	17		2%
40	Star Jewelry	18		3%
42	El Paso Court(front)	16		2%
42	InfocusOptometry	19		3%
44	A1 hair	12		2%
48	Nomiakosushi		18	3%
50	Mac Salon	11		2%
52	The Temple		31	4%
58	Proposed Project		47	7%
66	Gravity House	33		5%
72	Paper Plane		30	4%
74	LeDyen Massage	18		3%
76	Spur	18		3%
78	Kzzang Restaurant	18		3%
80	Zanotos Express Deli	20		3%
84	Office	30		4%
86	Ozu Sushi	18		3%
96	Nema Greek Restaurant	74		11%
	<b>total</b>	<b>510</b>	<b>184</b>	<b>694</b>
	<b>%</b>	<b>73%</b>	<b>27%</b>	<b>100%</b>

5/20/2015

Dear Planning Commission,

To date, staff has received five comment letters in regards to File No. CP15-016. The five letters attached for your review are from the Diocese of San Jose, Hopkins & Carley, San Jose Downtown Association, Barry Swenson Builder, and a second letter from Hopkins & Carley. The applicant has provided a response letter (attached) to the first Hopkins & Carley letter. Also, attached is an Operations & Management Plan for the proposed nightclub that was provided by the applicant.

Sincerely,  
Planning Staff

Attachments:

1. Letter from Diocese of San Jose, dated May 13, 2015
2. Letter from Hopkins & Carley, dated May 13, 2015
3. Letter from San Jose Downtown Association, dated May 13, 2015
4. Applicant response letter to the Hopkins & Carley letter, dated May 18, 2015
5. Letter from Barry Swenson Builder, dated May 20, 2015
6. Letter from Hopkins & Carley, dated May 19, 2015
7. Letter from San Jose Downtown Association, dated May 19, 2015
8. Letter from San Jose Silicon Valley Chamber of Commerce, dated May 20, 2015
9. 58 S 1<sup>st</sup> Street Operations & Management Plan



**Chief Financial Officer**

May 13, 2015

Mr. Harry Freitas  
Director, Planning, Building & Code Enforcement  
City of San Jose  
200 East Santa Clara Street  
San Jose, CA 95113

RE: Conditional Use Permit recommendation for a Drinking Establishment at 58 South 1<sup>st</sup> Street

Dear Mr. Freitas,

I am the Chief Financial Officer of the Diocese of San Jose and as such have responsibility for the properties of the Diocese and the Bishop of San Jose.

I just learned today by phone call from Mr. William Ryan of Barry Swenson Builder that the City's Planning Commission Staff is recommending approval of a permit for a 250 person drinking establishment/club at 58 South 1<sup>st</sup> Street.

We are the owners of the former Porter-Stock property on 1<sup>st</sup> Street (the empty land across the street and adjacent to the parking structure) and of course are owners of the Basilica Cathedral which backs up to that empty lot on 1<sup>st</sup> Street.

We have no record of being notified of this proposed action.

We respectfully request that this action be deferred until such time as we can be properly notified and study your proposed action and its impact on us.

Thank you.

Robert Serventi

Chief Financial Officer

cc: William Ryan, Barry Swenson Builder

SAN JOSE  
THE LETITIA BUILDING  
70 S FIRST STREET  
SAN JOSE CA 95113-2406  
T 408.286.9800  
F 408.998.4790

PALO ALTO  
200 PAGE MILL ROAD  
SUITE 200  
PALO ALTO CA 94306-2062  
T 650.804.7600  
F 650.804.7630



MAILING ADDRESS  
PO BOX 1469  
SAN JOSE CA 95109-1469  
hopkinscarley.com

May 13, 2015

JEFFREY E. ESSNER  
Shareholder  
jessner@hopkinscarley.com  
408-286-9800

***Via E-Mail and Hand Delivery***

City of San Jose  
Honorable Members of the Planning Commission  
200 East Santa Clara Street  
San Jose, CA 95113-1905

***Re: File No. CP15-016 (Vanity SJ)***

Dear Honorable Members of the Planning Commission:

I am the Managing Shareholder of Hopkins & Carley, A Law Corporation, located at 70 South 1st Street in San Jose. We recently learned that the Planning Commission ("Commission") will be considering an application for a Conditional Use Permit ("CUP") at its meeting tonight with respect to the former Bella Mia restaurant space located at 58 South 1<sup>st</sup> Street. At the outset, we request that this matter be deferred so that Hopkins & Carley can discuss the item with Staff and/or the project applicant. There has been no dialogue up to this point as we did not receive a hearing notice and only learned of this item by reviewing the Commission agenda.

Hopkins & Carley has resided in the Letitia Building, a designated historical landmark, since 2001. We are proud of the building and our city, and are excited to be part of the exciting changes that are occurring in downtown San Jose. We support the goal of promoting projects that will help achieve the goals of the Envision San Jose 2040 General Plan, including projects that will enhance the vibrancy and business diversity of the downtown area.

By way of background, Hopkins & Carley has been in San Jose for over 45 years. We employ over 120 attorneys and non-attorneys in our offices. Because we are a client-driven business, we do not close our doors at a specific time. Our attorneys and staff often work into well into the evening and on weekends. This "after hours" work frequently involves meeting or conferences with clients. Although not mentioned in the Staff Report, we note that our building entrance is less than 200 feet from the proposed Vanity SJ site and we are the largest tenant on the city block. In addition, a portion of the [east] side of our building shares a common wall with the [west] side of the Vanity SJ site. We will therefore be directly impacted by the operations of the proposed Vanity SJ project.

Given the nature of our business, and our proximity we have several specific concerns regarding the Vanity SJ project, and the CUP that is being considered by the Commission.

1. Council Policy 6-23(1)(c) provides that "new nightclub and bars that are not open during daytime hours should not occupy more than 30 percent of the street frontage on any one side of the street." The staff report contains no analysis of this issue. There are currently 4 other nightclubs and bars on our side of the street that are not open during daytime hours including, Paper Plane (72 South First Street), The Temple (52 South First Street), Nomiaki (48 South First Street), and Club Lido (30 South First Street). A guiding principal of the Envision San Jose 2040 General Plan is to attract more jobs. As the City continues to spend considerable time and resources to accomplish that goal, it becomes critical that we create a vibrant space for employees. The former tenant, Bella Mia Restaurant, was a prime location for business lunches and dinners for our law firm and the other business located in and around 1<sup>st</sup> Street. Additionally, we (and other businesses and organizations) routinely used the large banquet room on the second floor of the Pomeroy-Skerritt Building for department meetings, presentations, and other meetings that could not be accommodated in office buildings. The proposed use by Vanity SJ will result in another building on 1st Street that will be closed during the day; limiting the activation of a critical street at the core of our great City. *For this reason, we request that the Commission recommend denial of the CUP.*
2. We have significant concerns regarding the number of people that may occupy Vanity SJ if the CUP is granted. Council Policy 6-23(1)(3) provides that "new nightclubs should include sufficient space to accommodate queuing for patrons. This space should be provided on-site to the greatest extent possible." There is insufficient space in front of the proposed site to allow for queuing of up to 669 patrons. We are extremely concerned about the outdoor queuing of possibly hundreds of patrons outside of our offices as our employees and clients are entering and exiting our premises. We also note that the sidewalk is not wide, and there are light rail tracks on 1st Street; we think this could create a dangerous situation if hundreds of people are required to queue along the street. *For these reasons, we request that the Commission recommend denial of the CUP or alternatively, consider limiting the occupancy to 250, which is the maximum occupancy that would be allowed under the Zoning Ordinance without a CUP.*
3. We have significant concerns about the hours of operation. We frequently have clients, attorneys and staff in our premises into the evening, especially during the week nights. *For this reason, we request that the Commission recommend denial of the CUP or alternatively, in order to ensure that our operations will not be adversely affected by Vanity SJ, we request that the hours of operation of the nightclub be limited to 10 PM – 2 AM on Thursday, Friday, and Saturday nights, and that the nightclub not operate on Sunday through Wednesday nights.*

4. We believe that the Vanity SJ project will create significant noise issues in our building as we share a wall with a portion of the Vanity SJ premises and we have attorneys who have offices along the shared wall. Council Policy 6-23(2)(a) provides "Sound attenuation techniques may be required to buffer adjacent interior and exterior spaces from noise generated by a nightclub or bar use." Council Policy 6-27(1)(f) also states "Use of sound attenuation walls...may be required at property lines in order to minimize noise emanating from the site." Anytime there is music playing at one of our downstairs or adjacent neighbors, it can be heard in our building. We are seriously concerned about the sound that may be generated by a nightclub with 4 dance floors and up to 669 patrons. *For this reason, we request that the Commission recommend denial of the CUP. Alternatively, in order to ensure that noise does not disrupt our business, we request that the Commission consider requiring additional soundproofing along the common wall, and limit the use of the outdoor patio to hours in which the nightclub is open. We further request that consistent with Council Policy 6-23(2)(B), windows and doors should not be open during the operation of the facility and that adequate ventilation be provided so that openings to the outside can be closed when the bar or club is at full capacity.*
5. We are concerned about ventilation. We understand that Vanity SJ will begin serving food at 6pm. However, cooking will begin hours earlier. Cooking odors permeating our office was an issue with the prior tenant, as well. *In order to ensure that the odors do not create permeate our premises; we request that the Commission require appropriate venting of the cooking premises.*
6. We are concerned about cleanliness of the area directly in front of our building. We note that there is a condition in the resolution that requires the nightclub and bar operators to provide daily cleaning of the public right-of-way up to 200 feet from the property lines before 8:00 am each day. *We request that this condition be modified to require the area directly in front of our building to specifically be cleaned and cleared of any and all debris.*
7. Regardless of whether Vanity SJ patrons are permitted to queue in front of our premises, we are concerned that they may congregate in front of our building, before, during, and after Vanity SJ hours of operation. We believe this will result in unsafe situations for our attorneys, staff and clients, as well as residual cigarette butts, bottles, vomit, urine, etc. *Because we are a business that does not have 9-5 hours, we request that the Commission consider ways to establish a protective zone around our entrance area at any time that Vanity SJ is in operation, through the use of a stationed security guard and/or ropes to cordon-off the entrance to our building.*

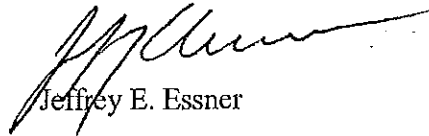
8. Council Policy 6-23(5)(g) provides that "...Compliance Reviews may be required and should include an evaluation of the operation as well as any subsequent reports required as part of the permit approval." *Given the concerns outlined above, we request that if the Commission recommends approval of the CUP, that it include a condition requiring an annual Compliance Review before the Planning Commission.*

Based on this information, we do not believe the Commission can find that the proposed CUP conforms with (1) the Envision San Jose 2040 General Plan; (2) City Council Policy 6-27: Evaluation of 24-Hour Uses; or (3) Council Policy 6-23: Guidelines for Evaluation of Nightclubs and Bars. We therefore request that the Planning Commission recommend denial of this CUP to the City Council, or at the very least, recommend approval with the modifications requested above.

Thank you for your consideration.

Sincerely,

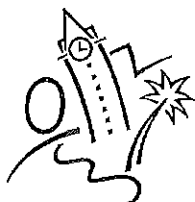
HOPKINS & CARLEY  
A Law Corporation



Jeffrey E. Essner

Cc: Harry Freitas  
Rosalynn Hughey  
Sandra Lee





**SAN JOSE DOWNTOWN  
ASSOCIATION**

28 N. FIRST STREET  
SUITE 1000  
SAN JOSE, CA 95113  
TEL: 408-279-1775  
FAX: 408-279-1904  
WWW.SJDOWNTOWN.COM

May 13, 2015

Chairperson Dori Yob  
City of San Jose Planning Commission  
200 E. Santa Clara Street  
San Jose, CA 95113

RE: CP15-016 – Vanity nightclub

Dear Planning Commission Chair Yob and fellow commissioners,

The San Jose Downtown Association requests this CUP on your agenda tonight be deferred to allow for more community outreach and for neighbors to understand better the large nightclub use being proposed for the site.

We have heard from several members in the vicinity of the project they are completely unaware of the pending application and use. Our office, for instance, did not receive any project notification. Our concern is that other property owners and tenants within the 500 foot radius also did not receive adequate notification.

While we are pleased to see that a business has come forth to fill the vacant retail space at 58 S 1<sup>st</sup> St. (formerly Bella Mia restaurant), we believe additional community outreach is needed for a proposed 669 occupancy club in the heart of downtown's Historic District.

Thank you for your consideration.

Sincerely,

  
Scott Knies  
Executive Director

cc: Rosalynn Hughey, Assistant Planning Director  
Jenny Wolfes, applicant  
Chris Neale, SJDA President

May 18, 2015

Hopkings & Carley  
Mr. Jeffrey Essner  
70 S. First Street  
San Jose, CA 95113

Re: CP15-016 Response to Letter dated 5/13/2015

Dear Mr. Essner,

Thank you and your colleagues for taking time to meeting with us on Friday, May 15, 2015 to review the concerns outlined in your letter to the Planning Commission regarding the operation (Vanity SJ) of a restaurant, lounge and banquet use at 58 S. First Street.

The meeting dialogue provided insight to both groups regarding the proposed operation, your business operation, and the condition of South First Street between W. Santa Clara and W. San Fernando Streets.

You stated that the most important issues were 1.) Noise, 2.) Security, 3.) Cleanliness. However, we are responding to your eight (8) concerns point by point with our proposed action and with information that will support our intent to operate in a responsible manner as we have at our other two downtown business venues for the last 12 years. We have invested in Downtown San Jose just as you have and wish to invest further with our new business Vanity SJ.

Response to specific concerns as listed in your letter.

**Concern 1.** That with the addition of our use on S. First Street between San Fernando and W. Santa Clara Street there will be *more* than 30% of the street frontage with closed businesses during the day.

**Response:** Including Vanity SJ there will be 27% street frontage closed during the day (see attached). Even without lunch service, there will be activity as we plan to book private events throughout the day such as breakfast and luncheon meeting plus use of the second floor for corporate events, weddings and meetings. It may take three to six months to build this portion of the business utilizing our fifteen years of marketing experience and media contacts.

A viable dinner business must be achieved before we consider opening for lunch. In addition, a.) The economy has not adjusted enough to support a lunch business, b.) Sit down lunch service has trended away from this portion of the block, and c.) San Pedro Square has drawn a large portion of the lunch crowd away from the downtown center, d.) Fountain Alley Parking Lot has increased their fee to \$6 per hour making it difficult to entice lunch crowds to this area. The cost of parking in general and the lack of validated parking makes downtown a challenge for destination lunchtime dining.

To create daytime interest in the storefront, a window treatment consisting of murals that complement the street character and the business theme are planned and will be in place before we open for business. The Downtown Association has successfully used murals and window staging to bring life to blank storefronts as have landlords.

Concern 2. Number of occupants and queuing that may overlap to the Security Building, 70 S. First Street where Hopkins & Carley is located.

Response: The queuing lines will be in front of the building controlled by stanchions and security personnel.

Sundays and Mondays will consist of special events only. Tuesdays and Wednesdays will be mostly happy hour, dinner, and a small crowd for late night entertainment unless it is a special event. Thursday, Friday, and Saturday will be the larger nights. Thursdays are seasonal and tend to be busier during summer. Fridays and Saturdays are the higher occupancy nights like everything else on the street

Concern 3. Nightclub hours of Operation, limit nightclub operation 9 pm – 2 am, Thursday, Friday and Saturday.

Response: Hours of operation will not affect the neighboring business as,

- a.) Vanity SJ will be closed on Sunday and Monday except for special events day or evening.
- b.) Tuesday and Wednesday only the first floor will be used unless there is a special event or a banquet is scheduled upstairs. Since, Tuesday and Wednesday nights tend to be slower nights the full use on those two days may consist of less than 50 – 250 persons,
- c.) *The full nightclub operation will primarily be open Thursday thru Saturday, which accommodates your request.*
- d.) Events may consist of weddings, business seminars, dinners that will have attendees that mirror Hopkins & Carley clients. We are as concerned about the environment our customers will encounter when they come to First Street. We will do all we can to make it comfortable and worthwhile for them by working with our neighbors and our staff to maintain the area in clean and safe condition.

Concern 4. Sound attenuation techniques. *Hopkins & Carley do not maintain normal office hours working late on some nights. Their offices are located on the second and third floors of their building.*

Response: a.) Any doorways, gaps in the second floor, in particular in the 12' wide second floor service area/hall that could allow sound to penetrate to the adjacent offices will be sealed with the appropriate product such as heavy drapery, acoustic curtains or caulking. *Every effort will be made to prevent noise from emanating beyond the premises.*

b.) Only ambient music will be played on the second floor during the normal workday until 6 PM, Monday through Friday.

The first floor does not have any offices on the other side of the wall so there should not be any noise issues.

c.) Sound equipment, speakers will face away from the connecting wall. It has been proven that proper placement of sound equipment will direct sound where needed. With fifteen (15) years of experience, and multiple buildings with different noise challenges we will have the proper equipment to establishment sound levels that will meet the needs of the neighbors and our customers.

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e.) A DB meter will be used to measure sound levels and to set the limiters.

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Concern 5. Ventilation and cooking odors.

Response: The cooking area and equipment will be reduced by 60%. The large cook line in front and rotisserie that caused the majority of the odors will be eliminated. There will be a normal size cook line with only four (4) pieces of cooking equipment. Quarterly grease trap cleaning will be scheduled. The proposed menu (see attached) is not extensive and does not require lengthy preparation, as did the Bella Mia menu.

Concern 6. Area cleanliness, 200' radius.

Response: a.) The front of Vanity SJ front will be cleaned every night at the close of business as per the CUP condition.

b.) Working with the Downtown Business Association, a meeting is scheduled for May 27, 2015 with other late night businesses on the block to make sure everyone has a designated cleaning area in addition to their frontage since the 200' called out in your letter overlaps to other businesses, in particular two, Paper Plane and Gravity that are adjacent to Hopkins & Carley's door way and under their offices.

c.) The management of the privately owned parking garage across the street has been contacted regarding their cleaning timeline and process and invited to attend the preliminary business meeting and then the Entertainment Committee meeting coordinated by the Downtown Association. Future business and committee meetings can be hosted by Vanity SJ.

d.) **Homeless:** Businesses are being impacted by the homeless that have adopted Downtown Core as a safe place to sleep. Storefronts and sidewalks are cleaned, lights are turned off at 2:30 am, and then another population takes over. Urine, feces, debris of all kinds appear over night that have nothing to do with the late night businesses. That cleanliness challenge will be discussed at the preliminary late night business owner meeting, The Historic District Committee and at the Entertainment Committee.

Concern 7. Hopkins & Carley doorway, security.

Response: a.) As requested, we will place a stanchion at the Hopkins & Carley doorway, 70 S. First Street when we are operating as a nightclub.

b.) Security cameras will be placed to record activity in front and north and south of Vanity SJ. Footage can be used to evaluate security, cleaning by late night operators and in general, street activity any night.

b.) When the nightclub is operating we will provide security at night to Hopkins & Carley staff to get to their cars at the nearby parking garage.

c.) There are two bars adjacent to their door way that are part of the building that may have customers congregating at the doorway to smoke, in particular, because it is well lit. This item will be discussed with the other late night business owners when we meet next week.

d.) Vanity SJ procedures include getting our customers in quickly and efficiently, and having them exit from front and back. Security will clear the area to avoid after party issues and loitering in front of the storefronts.

Concern 8. Request annual compliance review by the Planning Commission.

Response: We have a significant investment in downtown San Jose with Vanity SJ and with two other businesses that in 12 years have never been a nuisance or caused any issues that required a compliance review or any police concerns. A business owner, downtown investor needs the security that a permanent permit provides. An annual compliance review permit condition *does not* provide that security, assurance. There are other tools, methods to gauge and sustain performance such as the complaint log maintained by the required Disturbance Coordinator, police reports that are public information and the Entertainment Permit that must be renewed every four years otherwise entertainment must cease. We are also major stakeholders like Hopkins & Carley and will do everything possible to maintain our business in accordance with the CUP conditions. We also have created jobs, at present, we have 50+ employees. With Vanity SJ that number will jump to 90+.

We hope that the sound attenuation measures, reduced venting needs, transparency with hours of operation, communication with other late night operators and the nearby private garage, all the information that we have provided has addressed your concerns. **In addition, we propose a change to the proposed condition 15. Anti Litter, b. "... clean by 8 AM " to 6 AM and the addition to 16. Security, c. "Stanchions shall be placed at 70 S. First Street when the night club is in operation," as you requested.**

The response to the concerns expressed by your self on behalf of Hopkins & Carley was thoughtfully done to assure that we are able to perform what we propose to do. We believe that the Commission with the additional information will find that the proposed CUP with minor changes will address the needs that were expressed by Mr. Essner in his letter. We are serious about being good neighbors and have offered our contact information (Jenny Wolfes) so that we can be called at the moment that there is an issue that requires our attention.

Mr. Essner, we look forward to your support of our request for a Conditional Use Permit.

Sincerely,

*Jenny Wolfes*

1<sup>st</sup> Street SJ Enterprise  
Jenny Wolfes

Attachments

CC: Harry Freitas

Planning Commission

Councilmember Peralez

Jean Cohen, Policy Aide District 3

Scott Knies

David D. Fong

Emily Lipoman

Chloe Verrey

Avril Baty

Juan Borelli

## WHAT IS VANITY?

A FUSION OF CAREFREE, FUN FOOD AND MUSIC IN AN ATMOSPHERE  
EQUALLY FUN AND FULL OF PEOPLE ENJOYING THEMSELVES AFTER A DAY  
OF SHOPPING OR WORK.

## VANITY

58 S 1ST SAN JOSE CA 95113

### CHOICE OF MEAT

POLLO ASADA - CHICKEN - CARNE ASADA - BEEF  
CHILE VERDE - PORK / TORNATILLO - CARNITAS  
BRAISED PORK

### APPETIZERS

CHIPS AND SALSA \$3.50  
CHIPS AND GUACAMOLE \$3.95

Fresh avocados, pico de gallo and fresh lime juice

NACHOS \$6.95

crisp chips topped with ; refried beans, a trio of melted cheese, fresh guacamole and pico de gallo.

HOT and SPICY WINGS \$6.95

Chicken wings in your choice of our Mexican BBQ or spicy wing sauce served with homemade ranch dip

### TACOS

CLASSIC TACO \$6.95

Choice of meat with beans, cheese and salsa.

FISH TACO \$4.95

Fried fish, pico de gallo, shredded cabbage and salsa

VEGGIE TACO \$3.95

fresh veggies, cheese, salsa fresca, black beans, and salsa

SHRIMP TACO \$5.95

Grilled shrimp, pico de gallo, shredded cabbage and salsa

### BURRITOS

CLASSIC BURRITO \$7.95

Choice of meat, rice, cheese, beans, and Pico de gallo

SHRIMP BURRITO \$9.95

Grilled Shrimp, Rice, beans, jack cheese, and Pico de gallo

GRILLED VEGGIE BURRITO \$6.95

Garden fresh veggies, guacamole, cilantro rice, cheese, salsa fresca, black beans, and salsa

BEAN AND CHEESE BURRITO \$5.95

pinto beans and cheese.

CLASSIC QUESADILLA \$6.95

A flour tortilla, Monterey Jack cheese and salsa with fresh guacamole and sour cream on the side.

May 20, 2015

City of San Jose  
Honorable Members of the Planning Commission  
200 E. Santa Clara Street  
San Jose, CA 95113

Re: **File No. CP15-016 (Vanity SJ)**  
*Via E-Mail on May 20, 2015*

Dear Honorable Members of the Planning Commission:

On behalf of Barry Swenson Builder, we are requesting that the above referenced item be deferred to the Planning Commission meeting scheduled for June 10<sup>th</sup>. The proposed use in this neighborhood will have significant impact on the surrounding businesses, many of whom have been loyal to downtown San Jose for years.

Although the applicant did agree to defer the previous meeting in order to meet with potential impacted neighbors; there was not enough time to conduct thorough and proper outreach. We believe that the applicant should be required to reach out to all of the tenants and property owners in the area who will likely be affected by the applicant's use. Only then will we be able to assess their responses to the issues that have been raised. It is not fair to the surrounding neighbors who will not be able to voice their opinion.

This Historic District has been one of the major focal points in the efforts to revitalize downtown San Jose. It has a long history of supporters who have made substantial investments into this area, including property owners, the City of San Jose along with restaurant, office and retail tenants. It would only make sense to make the extra effort and reach out to these vested stakeholders.

I appreciate the fact that the applicant has been willing to address these concerns and I am optimistic that if we make the effort we can come up with solutions to address the neighborhood concerns. But, we will need the time in order to make sure the process is effective.

Thank you for considering our request for an additional deferral. I apologize as I am unable to attend tonight's meeting because of a previous commitment.

Sincerely,



William P. Ryan  
Senior Vice President  
Barry Swenson Builder

SAN JOSE  
THE LETITIA BUILDING  
70 S FIRST STREET  
SAN JOSE CA 95113-2406  
T 408.286.9800  
F 408.998.4790

PALO ALTO  
200 PAGE MILL ROAD  
SUITE 200  
PALO ALTO CA 94306-2062  
T 650.804.7600  
F 650.804.7630



**HOPKINS & CARLEY**  
A LAW CORPORATION

MAILING ADDRESS  
PO BOX 1469  
SAN JOSE CA 95109-1469  
hopkinscarley.com

May 19, 2015

JAY M. ROSS  
Shareholder  
jross@hopkinscarley.com  
408-286-9800

*Via E-Mail, and Via Hand Delivery on May 20, 2015*

City of San Jose  
Honorable Members of the Planning Commission  
200 East Santa Clara Street  
San Jose, CA 95113-1905

**Re: File No. CP15-016 (Vanity SJ)**

Dear Honorable Members of the Planning Commission:

On behalf of Hopkins & Carley, I am writing to request that item 4(a) on the May 20<sup>th</sup> Planning Commission Amended Agenda be further deferred to the June 10<sup>th</sup> Planning Commission meeting. As you will recall, we originally appeared before you on this item last Wednesday (May 13<sup>th</sup>) shortly after we first learned of the pending CUP application. At the May 13<sup>th</sup> meeting, the applicant agreed to defer the item to the May 20<sup>th</sup> Planning Commission meeting to allow time for discussion with Hopkins & Carley and several other interested neighbors and stakeholders. At least two members of the Planning Commission questioned whether the short 7-day deferral would allow enough time for meaningful discussion. The applicant's consultant pushed for the short deferral.

We held an initial meeting to begin a dialogue about the project on Friday, May 15<sup>th</sup> at 2:00 pm. The meeting was attended by the applicant, the applicant's consultant, a representative from Barry Swenson Builder, a representative from the San Jose Downtown Association, a representative from the San Jose/Silicon Valley Chamber of Commerce, and representatives from Hopkins & Carley. At the end of the 2-hour meeting, we had not reached resolution on any of the concerns set forth in Hopkins & Carley's letter to the Planning Commission dated May 13, 2015, but the applicant and the applicant's consultant agreed to respond in writing to each of the requests in our letter. Late yesterday afternoon, we received a 4-page letter from the applicant responding to our letter dated May 13th. From our perspective, the conversation has just begun and we need additional time to see if we can reach compromise on the many issues raised. Additional dialogue is necessary for Hopkins & Carley to fully understand the project, and for the parties to be prepared so that Planning Commission and City Council will be in a position to make an informed decision during the public hearing process. We also are concerned that other stakeholders (outside of Hopkins & Carley) may not be available for, and know of at least 1 who cannot be present at the May 20<sup>th</sup> hearing.



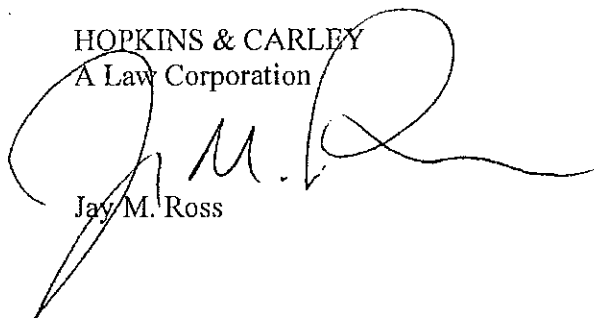
City of San Jose  
May 19, 2015  
Page 2

The applicant has expressed concern about making sure her application is heard by City Council before its recess in July. There are two City Council Meetings scheduled following the June 10<sup>th</sup> Planning Commission Meeting – one on June 16<sup>th</sup> and one on June 23<sup>rd</sup>. Consequently, while our focus is on adequate and appropriate consideration of the requested CUP, a further deferral would not impede the applicant's desire to have her item heard by City Council before July. We therefore request that this item be deferred to June 10<sup>th</sup>.

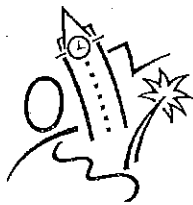
Thank you for your consideration.

Sincerely,

HOPKINS & CARLEY  
A Law Corporation

A handwritten signature in black ink, appearing to read "J. M. Ross", is written over the printed name "Jay M. Ross". The signature is fluid and cursive, with a large loop at the beginning and end.

Cc: Harry Freitas (via e-mail only)  
Rosalynn Hughey (via e-mail only)  
Sandra Lee (via e-mail only)  
Lydia Guel, Chief of Staff to Councilmember Raul Peralez (via e-mail only)  
Bill Ryan, Barry Swenson Builder (via e-mail only)  
Chloe Verrcy (via e-mail only)  
Jonathan Padilla (via e-mail only)  
Jeffrey E. Essner, Esq.



**SAN JOSE DOWNTOWN  
ASSOCIATION**

28 N. FIRST STREET  
SUITE 1000  
SAN JOSE, CA 95113  
TEL: 408-279-1775  
FAX: 408-279-1904  
[WWW.SJDOWNTOWN.COM](http://WWW.SJDOWNTOWN.COM)

May 19, 2015

Chairperson Dori Yob  
City of San Jose Planning Commission  
200 E. Santa Clara Street  
San Jose, CA 95113

RE: CP15-016 Vanity nightclub

Dear Planning Commission Chair Yob and fellow Commissioners,

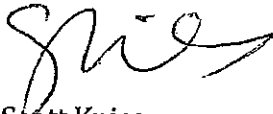
The San Jose Downtown Association (SJDA) supports activation of the vacant retail space at 58 S 1<sup>st</sup> Street (formerly Bella Mia Restaurant). However, we have several concerns with the proposed CUP as it is currently conditioned.

The applicant plans to remove approximately 60 percent of the current kitchen infrastructure indicating to us that restaurant operations will be likely minimized. This is a prime location for a full-service restaurant and the proposed infrastructure changes to create an "ultra lounge" may inhibit future restaurant uses for the building. Additionally, reducing the size of the kitchen may impact the business' ability to host special events and banquets, which are proposed in the CUP.

The lack of daytime activation for this storefront in the heart of downtown's Historic District is particularly concerning to our members. Formerly, this space was active for lunch and dinner service seven days a week. The applicant proposes restaurant use only from 6-9 p.m. The assumption is that the property would be closed each day until 6 p.m. (except for special events). SJDA would like the ground floor spaces activated with use during the daytime hours, perhaps with lunch service, a minimum number of days per week.

SJDA continues to engage with the applicant to undertake additional community outreach in an effort to engage members in the Historic District. This meeting is scheduled May 27.

Sincerely,

A handwritten signature in black ink, appearing to read 'Scott Knies', written in a cursive style.

Scott Knies  
Executive Director

cc: Harry Frietas, Planning Director  
Jenny Wolfes, Applicant  
Chris Neale, SJDA President



**Executive Committee**

2015 BOARD CHAIR  
Sean Cottle  
Hoge Fenton Jones & Appel

FIRST VICE CHAIR  
Jim Lynch  
San Jose Water Company

VICE CHAIR ECONOMIC  
DEVELOPMENT  
Cosme Fagundo  
Wilco Management

VICE CHAIR MEMBERSHIP  
ENGAGEMENT  
Joe Schumaker  
Cosmopolitan Catering

VICE CHAIR PUBLIC POLICY  
Lennies Gutierrez  
Comcast

VICE CHAIR  
WORKFORCE EDUCATION  
Irene Chavez  
Kaiser Permanente

AT-LARGE  
Michael Bangs  
Oracle

Michael Fox Jr.  
Goodwill Silicon Valley

Mary Ellen Ittner  
Pacific Gas and Electric Company

Bruce McKenzie  
Silicon Valley Capital Club

Jonathan Noble  
Microsoft

Michael Turpin  
Bay Area News Group

Roxanne Vane  
Heritage Bank of Commerce

CHAMBERPAC CHAIR  
Dan Bozzuto  
Bozzuto Insurance Services

LEGAL COUNSEL  
Eugene Ashley, Esq.  
Hopkins & Carley,  
A Law Corporation

TREASURER  
Marc Parkinson  
Petrinovich Pugh & Co., LLP

IMMEDIATE PAST CHAIR  
Michelle Peacock  
PayPal

PRESIDENT & CEO  
Matthew R. Mahood  
San Jose Silicon Valley  
Chamber of Commerce

May 20, 2015

City of San Jose  
Planning Commission Members  
San Jose City Hall  
200 East Santa Clara Street  
San Jose, CA 95113

**Re: CP15-016 – Vanity SJ Night Club**

Dear Members of the Planning Commission:

On behalf of the San Jose Silicon Valley Chamber of Commerce (SJSV Chamber), our 65 member board of directors and our nearly 1500 member businesses, I write to urge the deferral of agenda item **CP15-016** on the Wednesday, May 20<sup>th</sup> meeting. The Chamber was present this past Friday at a meeting between the proprietor of the proposed Vanity SJ Night Club, the San Jose Downtown Association, and partners from the law firm of Hopkins & Carley and based on the information provided believes that Vanity SJ and Hopkins & Carley need to resolve concerns before this project can move forward.

Hopkins & Carley has a long standing commitment to the city of San Jose. Working with community leaders such as Jim Salata, Barry Swenson, and others, the firm has been a large force in the revitalization of the Letitia Building, which is a critical anchor on South First Street. Based on information provided this past Friday, May 15<sup>th</sup>, the Chamber believes that issues ranging from noise and nuisance to safety and security have not been addressed by the proprietor of the proposed SJ Vanity Night Club and that further consultation between Hopkins & Carley and other neighborhood stakeholders is needed before granting a conditional use permit.

The conversation on Friday yielded positive first steps between Hopkins & Carley and Vanity SJ, but additional time is needed to hammer out details and conduct due diligence. The Chamber is not necessarily opposed to this project, but we do feel that the questions posed by Hopkins & Carley merit attention and need to be addressed before moving forward.

Sincerely,

Matthew R. Mahood  
President & CEO

CC:

Harry Freitas  
Rosalynn Hughey  
Sandra Lee  
Lydia Guel  
Bill Ryan  
Chloe Verrey  
Jeffrey Essner

**File No.**

**DBA Name TBD**

**1<sup>st</sup> Street S.J. Enterprise**  
**58 S 1<sup>st</sup> Street, San Jose, CA**

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- IV. Employee Information  
The California Penal Code  
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- V. Menu

**Contact Person**

Sandra Escobar

*Escobar Legacy Consulting*

(408) 483-4611

[sesco2@aol.com](mailto:sesco2@aol.com)

**Description**

1<sup>st</sup> Street SJ Ent. , a 9400 sf Night Club Restaurant Banquet Facility is proposed at 58 S 1<sup>st</sup> Street. The lounge will feature classic Mexican food and entertainment that will create a fun upbeat atmosphere.

- The restaurant will serve a full menu of food from 6pm until 10:00 PM
- Ambient music will be provided from 6pm to 10:00 PM.
- Live music will be provided for corporate happy hours and private events.
- The lounge will be in operation 10:00 PM - 2:00 AM from Tuesday thru Saturday.
- The lounge may change days of operation (until 2 AM) to other days of the week so as to accommodate special events or changes in customer trends. The appropriate agencies will be noticed prior to changing the schedule.
- Entertainment, live and DJ will be provided during lounge hours.
- The upper floor will be used as a corporate event venue/ banquet facility at times when lounge is not in use.
- Minors will not be allowed after 10:00 PM unless they are in the upstairs banquet facility. Minors will be allowed after 10pm in the downstairs lounge area When the lounge is in operation with entertainment or before the drinking establishment uses commence, whichever is earlier. Staff will clear any minors present before the start of entertainment.

**Parking** for the venue has immediately available downtown parking

- Parking will be available thru many city and private lots.

**Staff (interior & exterior) will provide security** when entertainment commences at 9:00 PM and until closing, and until customers have cleared the area and the parking lot, at minimum 2:00 AM or as mandated by the City of San Jose Entertainment Permit.

- The Entertainment Permit requires one (1) security per fifty people; Management's goal is to provide sufficient security to prevent calls for service to the City of San Jose Police Department.
- During lounge hours, 9:00 PM to 2:00 AM security staff will monitor the interior and the front and back of building. Security will clear the parking lot behind the building at closing

# **1<sup>st</sup> Street S.J. ENTERPRISE**

58 S 1<sup>st</sup> Street , San Jose, CA

## **SECURITY PROCEDURES**

### **A. Introduction**

It is the goal and responsibility of 1<sup>st</sup> Street SJ Ent. management and staff that all patrons have an enjoyable and safe experience. The staff is trained to provide outstanding service and to detect any potentially dangerous situations. The staff is also trained to diffuse any agitated situations with minimal or no force. There is also protocol to use physical restraint when necessary to protect other patrons, staff or property.

### **B. Policy**

It is the responsibility of staff to limit the use of physical restraint to those circumstances in which there is no reasonable alternative:

1. To protect the life, health, (physical and mental) and general welfare of all customer and staff.
2. To prevent the destruction of property.
3. To prevent intoxicated customers from injuring themselves and others.

### **C. Definition**

As in the statement, the term "physical restraint" shall refer to physically restraining a customer, to physically removing a customer against his/her will to a place of safety.

### **D. General Rules**

1. Use physical force only to the extent necessary to bring the situation under control.
2. Corporal punishment of physical force is strictly prohibited.
3. In the instances in which a customer must be fully restrained or subdued, staff is required to call for assistance unless the situation clearly requires immediate action and the staff member judges that he/she can handle the situation without injury to themselves or the customers. In most instances, a show of force may deter the customer from any further violent action. If force is necessary, the involvement of more than one staff member decreases the possibility of injury to customer and staff.

### **E. Staff Training**

1. All staff working is required to be trained in the appropriate use of physical force. For the purposes of this policy, "the term staff" is defined as Doormen and security.
2. Managers and staff shall be trained in incident report writing including the accurate reporting of all events and behavior resulting in the use of physical restraint.
3. In general, staff shall comply with the principles and techniques promulgated by the authorized restraining program.

F. Circumstances under which the *use of force* may be necessary

1. By any staff member to protect him/her self.
2. To protect other customers from possible injury.
3. To protect intoxicated customers from injuring themselves and others.
4. If the customer continues their behavior and involves Management and the other staff, they should be asked to leave. If staff members feel they cannot handle the situation alone, they should contact another staff member for assistance immediately. Once there is a show of force, the customer should be asked quietly and politely to leave the premises immediately.

**Note:** Whenever possible the staff member should attempt to persuade the customer through verbal interaction. Physical restraint should always be the last result.

5. In the event that a customer has to be removed from the premises, staff should first ask the customer to walk under his or her own power. The staff member should walk along side the customer escorting them off the premises. This is to assure their safety and the safety of other customers when necessary, call for transportation if patron does not have a ride.

F. Should a customer have to be physically removed due to the reason mentioned above (Section F. of this policy). Staff member shall remain professional and move the customer off the premises as quickly and quietly as possible through the closest door. If in the patio area, the customer(s) should be escorted out the door that leads out to Beechwood Avenue. If in the bar area, the main door should be used when ever possible). This will be a judgment made by the staff and the floor manager dealing with the situation.

H. Medical Attention

In the event that a customer receives a minor (scrap or minor cut) injury during a physical altercation, it is the responsibility of the Floor Manager and the staff to administer basic first aid. If the injuries are more serious, a medical professional shall be called immediately. We are not required to be certified in first aid. In the event that serious medical attention is needed, the Floor Manager and police will make a judgment whether to call for medical attention with the customer's permission only. In instances where the customer's life is in jeopardy medical attention will be called immediately by the Floor Manager or the police.



### Security Staff Safety Policies

Each member of the Security Staff shall review and become familiar with the following safety policies, retain a copy for reference, and sign and return a copy to management.

1. The primary responsibility of all security personnel is to protect and maintain the safety of patrons, employees, and all other individuals on the premises. Security personnel shall respond immediately to any situation that may pose a risk to any individual, and shall contact other security personnel for assistance.
2. Security personnel shall promptly intervene and subdue any violent, dangerous, or offensive situation. In doing so, security personnel shall take every precaution to prevent injury to any individual, including the person(s) responsible for the offensive conduct.
3. Security personnel shall not initiate physical contact with any individual unless it is necessary to stop a dangerous or potentially dangerous situation. Whenever possible, security personnel shall try to defuse such situations by speaking to the individuals involved. Security personnel shall be polite and respectful in all communications.
4. If a violent or dangerous situation requires physical intervention, security personnel may restrain an individual who poses a safety risk. In doing so, security personnel shall take every precaution to prevent injury or offensive contact to the person(s) being restrained. Only reasonable and necessary force may be used. The mission of the security staff is to stop violent behavior, and to prevent violent individuals from harming others. Security staff may never retaliate against any individual, regardless what the individual has done.
5. If security personnel restrain or apprehend any individual for violent or unruly conduct, they shall immediately contact management, so that management may contact police as necessary.
6. All physical altercations shall be reported to management.
7. Security personnel shall inform management immediately after making physical contact with any individual.
8. Security personnel shall inform management if any individual is struck or injured by anyone, so that management may contact police or medical assistance as necessary.
9. Security personnel are personally liable, both criminally and civilly, for any improper acts, whether done intentionally or negligently.
10. Security personnel shall obey all local, State, and Federal laws and ordinances at all times, both in the performance of their job duties and when they are not working

\_\_\_\_\_  
Staff Name (print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Staff Signature

Received

Staff \_\_\_\_\_

\_\_\_\_\_  
Date

## **Employee Information**

### **The California Penal Code**

It is imperative that all employees of 1<sup>st</sup> Street SJ Ent. Restaurant Lounge read this 2-page document and know the law as this information will help in the execution of your duties.

In your work, you are faced with a number of situations that may involve potentially dangerous situations. Knowing what you can and cannot do in those situations safeguards 1<sup>st</sup> Street SJ Ent. and yourself from possible lawsuits. Please read these laws and if you have any questions please direct them to the Head of Security.

#### **Definitions**

240. a.) An Assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.

241. a.) An Assault is punishable by a fine not to exceed one thousand dollars (\$1,000), or imprisonment in the county jail not exceeding six months, or both the fine and imprisonment.

242. a.) A Battery is a willful and unlawful use of force or violence upon the person of another.

243. a.) A Battery is punishable by a fine not exceeding two thousand (\$2,000), or by imprisonment in the county jail not exceeding six months, or both fine and imprisonment.

415. Any of the following persons should be punished by imprisonment in the county jail for a period of not more than 90 day, a fine of not more than four hundred dollars (\$400.00) or both imprisonment and fine.

1.) Any person who unlawfully fight in a public place or challenges another person in a public place to fight.

2.) Any person who maliciously and willfully disturbs another person by loud and unreasonable noise.

3.) Any person who uses offensive words in a public place that are inherently likely to provoke an immediate violent reaction.

647. Every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor.

f) Who is found in a public place under the influence of intoxicating liquor, any drug, controlled substance, or toluene, or any combination of any intoxication liquor, drug, controlled substance, or toluene, in such a condition that he/she is unable to exercise care for his or her safety or the safety of others, or by reason of his/she being under the influence of intoxicating liquor, drug controlled substance, toluene, or combination of any intoxicating liquor, drug, controlled substance, or toluene, interferes with or obstructs or prevents the free use of the street, sidewalk, or public way.

647.1 In addition to any fine under the Section 647. The judge may assess a fine not exceeding seventy dollars (\$70.00) against any person who violates (f) Section 647

834. An arrest is taking a person into custody, in case and in the manner authorized by law. A Peace Officer or Private Person may make any arrest.

836. An arrest is made by an actual restraint of the person, or by submission to the custody of an Officer. The person arrested may be subject to such restraint as is reasonable for his arrest and detention.

837. A Private Person may arrest another:

- 1.) For a public offense committed or attempted in his presence.
- 2.) When the person arrested has committed a felony, although not in his presence.
- 3.) When a felony has been in fact committed and he has reasonable cause for believing the person arrested to have committed it.

839. Any person may orally summon as many persons as he deems necessary to aid him therein.

841. The person making the arrest must inform the person being arrested of the intention to arrest him, of the cause for the arrest, and the authority to make the arrest, except when the person making the arrest has reasonable cause to believe that the person to be arrested is actually engaged in the commission of or an attempt to commit an offense, or the person to be arrested is pursued immediately after its commission, or after an escape. The person making the arrest must, upon request of the person he is arresting, inform the latter of the offense for which he is being arrested.

#### **Employee Responsibility**

It is the responsibility of all 1<sup>st</sup> Street SJ Ent. employees to read this information and to act in compliance of all the above-mentioned laws at all times, and to behave in a professional manner in the commission of their duties. In the event an employee does not act in compliance with these laws and all other rules governing employee behavior in the performance of their duties, the employee can be dismissed, pending an investigation. The owners of 1<sup>st</sup> Street SJ Ent. will not take responsibility to protect employees who commit acts of noncompliance of the Laws and Rules governing professional behavior of its employees. All security and bartenders personnel must attend ABC LEAD classes. All security must have and carry a California Guard Card .

Employee Name (print): \_\_\_\_\_

Employee Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Manager Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## **FOOD MENU**

### **CHOICE OF MEATS**

POLLO ASADA – CHICKEN

CARNE ASADA – BEEF

CHILE VERDE - PORK/ TORNATILLO

CARNITAS- BRAISED PORK

## **APPETIZERS**

### **CHIPS AND SALSA**

### **CHIPS AND GUACAMOLE**

Fresh avocados, pico de gallo and fresh lime juice

### **NACHO'S**

Crisp chips topped with refried beans, a trio of melted cheese, fresh guacamole and pico de gallo

### **HOT and SPICY WINGS**

Chicken wings in your choice of our Mexican BBQ or spicy wing sauce served with homemade ranch dipp

## **TACO**

### **CLASSIC TACO**

Choice of meat with beans, cheese and salsa .

### **FISH TACO**

Fried fish,pico de gallo,shredded cabbage and salsa

### **VEGGIE TACO**

fresh veggies, cheese, salsa fresca, black beans, and salsa

### **SHRIMP TACO**

Grilled shrimp,pico de gallo,shredded cabbage and salsa

### **BURRITOS**

### **CLASSIC BURRITO**

Choice of meat ,rice,cheese,beans,and Pico de gallo

### **SHRIMP BURRITO**

Grilled Shrimp Rice, beans,jack cheese,and Pico de gallo

### **GRILLED VEGGIE BURRITO**

Garden fresh veggies, guacamole, cilantro, rice, cheese, salsa fresca, black beans, and

### **BEAN AND CHEESE BURRITO**

Pinto beans and cheese

### **CLASSIC QUESADILLA**

A flour tortilla, Monterey jack cheese and salsa with fresh guacamole and sour cream on the side